

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE FIELD OFFICE
10 South Howard Street, 3RD Floor
Baltimore, MD

)	
Walter Flournoy,)	
on behalf of himself)	
and all other persons similarly situated,)	
)	
Class Agent,	)	Agency No. NCN-92-GSFC-F064
)	
v.	)	EEOC No. 120-A2-1267X
)	
Sean O’Keefe, Administrator)	
National Aeronautics and)	
Space Administration,)	
)	
Agency.)	
)	

SETTLEMENT AGREEMENT

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I. INTRODUCTION

On April 19, 1993, Walter Flournoy, an African American engineer employed by the National Aeronautics and Space Administration (“NASA”) Goddard Space Flight Center (“Goddard” or (“GSFC”), filed an administrative class complaint of discrimination against NASA Goddard alleging violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* In the administrative complaint, the Class Agent sought declaratory, injunctive, and monetary relief on behalf of himself and the putative class of all African American non-managerial, non-supervisory scientists and engineers at NASA’s Goddard Space Flight Center who were eligible for but did not receive promotions from the GS-13 and GS-14 to the GS-14 and GS-15 levels.

NASA Goddard forwarded the administrative complaint to the Equal Employment Opportunity Commission’s Office (“EEOC” or the “Commission”) for processing. Between May 1993 and March 1998, the parties litigated the issue of class certification. On March 3, 1998, the Commission Office of Federal Operations (“OFO”) issued a decision provisionally certifying the class and directing NASA’s continued processing of the complaint. In April 1998, NASA requested reconsideration of the decision, which was upheld on October 19, 2000. On November 21, 2000, NASA Goddard sent out a Notice of Acceptance of the class complaint.

In February 2001 the parties began voluntary mediation sessions before Linda Singer of ADR, Associates.¹ During this process, the parties voluntarily exchanged

¹ Although not formally named as class agents in the administrative complaint, Class Members Patrick McClain, William Weston and Leroy Brown, all retired during the liability period, participated in the mediation sessions as they had worked with Mr. Flournoy in prosecuting the complaint from its inception.

sufficient information to assess the relative merits of the systemic claims of the Class Agent and the putative class, and of NASA's defenses. Ultimately, the parties reached an agreement in principle on terms for the settlement, which terms are incorporated in and superseded by this Settlement Agreement.

This Agreement is reached after extensive arms-length negotiations between the parties and in the spirit of compromise and desire for final resolution of this matter. In the interests of ensuring equality of employment opportunity and respect for civil rights, and avoiding the expense, delay, and inconvenience of further litigation of the issues raised in this action, and in the absence of any admission of liability by NASA Goddard and in reliance on the representations, mutual promises, covenants, and obligations set out in this Settlement Agreement, and for good and valuable consideration also set out in this Agreement, the Class and NASA Goddard, through their undersigned counsel of record, hereby stipulate and agree as follows:

II. GENERAL PROVISIONS

A. Definitions

The following terms, as they are used in this Settlement Agreement, shall have the meanings defined below:

1. Administrative Class Complaint or Class Complaint

The formal administrative class complaint of discrimination filed against NASA Goddard by Walter Flournoy on behalf of himself and all others similarly situated on April 19, 1993, and pending before the EEOC's Baltimore District Office as No. 120-A2-1267X.

An additional Class Member, William Reaves, a current NASA Goddard employee, was brought into the mediation to broaden the representation of the interests of Class Members.

2. African American

As defined in Appendix 4 of the current Instruction Booklet for completion of Standard Form 100, Employer Information Report EEO-1. “African American” and “Black” are used interchangeably, and for the purposes of this Agreement shall include Black aliens, lawfully able to work for NASA Goddard but who are not of American citizenry or descent.

3. Claims Administrator

The firm retained pursuant to Part III of this Agreement to assist Class Counsel in the administration and distribution of awards to be made pursuant to this Agreement.

4. Class Claim

Any individual or class-wide actual or potential race discrimination claim, administrative charge, demand, grievance, complaint, right and cause of action of any kind, known or unknown, by a Class Member or the Class Agent against NASA Goddard for monetary, injunctive or equitable relief and/ or for attorney’s fees, arising from any events, acts, omissions, policies, practices, procedures, conditions or occurrences concerning employment or promotion in a position as a non-managerial, non-supervisory engineer or scientist at the GS-13 or GS-14 levels at any time on or after April 19, 1991, but no later than February 25, 2002, under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 *et seq.*, or any other federal, state, or local statute, regulation, rule, order, ordinance or other authority of any nature prohibiting racial discrimination in employment. Class Claim refers to any claims or other cause of action described above brought in an arbitral, judicial or other forum of whatsoever kind or nature.

5. Class Counsel

Maia Caplan, Jessica Parks, Michael Kator, Irving Kator, and other attorneys of the law firm of Kator Parks & Weiser, PLLC, 1020 19th Street, NW, Suite 350, Washington, DC 20036.

6. Class Expert

Drogin, Kakigi & Associates, 3104 Shattuck Avenue, Berkeley, CA 94705.

7. Class Agent

Walter Flournoy.

8. Confidential Information

Information of any type, kind or character and in any form that has been or will be obtained by one party to his case or its counsel or agents from the other party to this case its counsel or agents that is not generally known to the public. The term includes data that has been or will be provided by NASA Goddard; all statistical analyses of such data; all internal memoranda, e-mails, personnel plans, programs, policies and procedures, and computerized data; information regarding NASA Goddard's past, present or future employees, including, but not limited to, home addresses and telephone numbers, social security numbers, wage or earnings records, benefits, performance evaluations, or disciplinary records; NASA Goddard's confidential evaluations of business or personnel information; statistical data evaluating NASA Goddard's workforce; all information produced pursuant to the Mediation Confidentiality Agreement; and all discussions, communications, information, and negotiations regarding settlement and/or mediation of this case. Confidential information does not include the disclosure by one party of discussions, communications, information, correspondence or negotiations regarding this

case taking place between or among that party and its own counsel or agents; provided, however, that confidential information received by one party or its counsel or agents from the other party or its counsel or agents shall not lose its status as confidential information regardless of any action taken with respect to such confidential information by the party receiving it. The prohibition on disclosure of confidential information is not intended to bar Class Counsel from making statements to the Class which discuss the settlement process generally, or to bar either party from supporting and defending this Settlement Agreement at the Preliminary and Final Approval hearings.

9. Effective Date

The date on which the presiding Administrative Judge has finally approved the provisions of this Settlement Agreement, signed, and entered this Agreement *and* the time for appeal has run without an appeal being filed or, if an appeal is filed, the final resolution of that appeal.

10. Final Approval

The entry by the presiding Administrative Judge of the Order granting final approval of this Settlement Agreement as fair, reasonable, and adequate to the Class as a whole.

11. Mandatory Joinder Claim

Any race and/or reprisal claim arising out of the same occurrence, event, or nucleus of facts as any Class Claim.

12. Mediation Representatives

Class Agent Walter Flournoy and Patrick McClain, William Weston, Leroy Brown and William Reaves.

13. NASA Goddard

The National Aeronautics and Space Administration Goddard Space Flight Center, including the duty stations in Greenbelt, Maryland and Wallops Flight Facility, Wallops Island, Virginia.

14. Performance Management System

NASA Goddard's processes governing accretion and career ladder promotions; performance awards; training; and performance appraisals.

15. Performance or Special Act Awards

Monetary sums awarded to employees based on performance appraisals and for specific accomplishments associated with the mission of Goddard.

16. Retirement Eligible Class Members

Class Members who are current employees and who are: (1) eligible to retire (by qualifying age and years of service); and (2) elect to retire pursuant to Part III.C of this Agreement.

17. Settlement Fund

The qualified settlement fund created by the required prospective deposit of \$3,715,278 in principal by NASA Goddard, the purpose and administration of which are governed by Part III.B of this Agreement.

18. Settlement Fund Administrator or Trustee

The persons designated to effectuate settlement terms concerning satisfaction and resolution of all claims pursuant to Part III.B of this Agreement; receiving and processing information pertaining to Class Member's claims; investing, allocating and distributing

the Fund; and in general supervising the administration of the Settlement Fund in accordance with the Agreement.

19. Signing of the Agreement

The date on which all parties have signed the Agreement and in the event of multiple dates, the latest date of a party's signature.

20. Statistically Significant

A disparity measured by a least two standard deviations.

21. This Case

Refers to all proceedings relating to or arising from the Administrative Class Complaint, including, without limitation, any related informal administrative proceedings and mediation efforts that pre-dated the filing of the Administrative Class Complaint.

B. Jurisdiction and Venue

The Parties agree that the Commission has jurisdiction over the Parties and the subject matter of this action. Pursuant to 29 C.F.R. Section 1614.504, the Commission shall retain jurisdiction of this action for the duration of the Settlement Agreement for the purpose of entering orders that may be necessary to implement and enforce the relief provided herein.

C. Effective Date and Term of Agreement

This Settlement Agreement shall be effective and binding on the parties for a period of three (3) years from the Effective Date of this Agreement at which time it shall expire and be without force and effect, except as noted below with respect to releases/bars, confidentiality provisions, and unless extended pursuant to the terms of

Part III.A. The confidentiality provisions, releases and bars on claims shall survive the Agreement.

D. Persons Covered by Settlement Agreement

1. Definition of Class

Subject to the approval of the presiding Administrative Judge, the Parties agree to the certification of the following Class for purposes of settlement only:

All African American persons employed by NASA Goddard as GS-13 or GS-14 non-managerial, non-supervisory scientists or engineers at any time from April 19, 1991 to February 25, 2002, who were eligible for and did not receive promotions to the GS-14 or GS-15 grades.

2. Release/Bar of Claims

In consideration of the promises contained herein, and the benefits provided or to be provided hereunder, this Settlement Agreement shall fully resolve, extinguish, and finally and forever bar, and the Class Agent and other Class Members hereby release, any and all Class Claims and Mandatory Joinder Claims (as defined in Parts II.A), in law or in equity, which any of them, their representatives, agents, heirs, executors, administrators, successors, or assigns, may have, may have had, or in the future may have against NASA Goddard (including, without limitation, any continuing violation allegations made after February 25, 2002 that rely on evidence of violations occurring before February 25, 2002 arising from or relating to events that occurred prior to February 25, 2002).

The doctrines of *Res Judicata* and collateral estoppel shall bind the Class Agent and all other Class Members with respect to all Class Claims and Mandatory Joinder

Claims that are known or unknown, actual or potential. This Settlement Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or party that arises out of the claims released and discharged by this Agreement.

As a condition precedent to the receipt of any relief under the terms of this Agreement, the Class Agent and Class Members shall, in consideration thereof, execute NASA Goddard's Release and the Administrator's Release, exactly as they appear in Exhibits 2 and 3 respectively.

The Class agrees that the Complaint in this action, and any individual complaints or grievances filed by Class Members constituting Class Claims or Mandatory Joinder Claims, against NASA Goddard shall be dismissed in their entirety, with prejudice, on the Effective Date.

The Class and the Class Agent also agree that the EEOC, its representatives, agents, heirs, executors, administrators, successors, or assigns, shall have no liability arising from any action relating to this Settlement.

E. Denial of Liability

NASA Goddard expressly denies any wrongdoing or liability whatsoever. This Settlement Agreement represents the compromise of disputed claims. It reflects the parties' recognition that litigation of these claims would severely burden all concerned and require a massive commitment of time, resources, and money. The Agreement does not constitute, and is not intended to constitute, and shall not under any circumstances be deemed to constitute an admission by either party as to the merits, validity, or accuracy, or lack thereof, of any of the claims in this case. The sole rulings in this case, which were

made by the Commission in connection with the Administrative Class Complaint, related to the procedural issue of whether a class should be certified by the Commission; no ruling was ever made on the merits of the claims or allegations of the Class.

Nothing in or related to this Settlement Agreement, including an action taken to implement it or any statements, discussions, communications, or any materials prepared, exchanged, issued or used during the course of the mediation or negotiations leading up to the Settlement Agreement may be introduced or used or admitted in any way, in any other judicial, arbitral, administrative, investigative or other proceeding of any kind or nature whatsoever as evidence of discrimination, retaliation, or any violation of Title VII, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Documents, data, and information exchanged by the parties since the inception of the lawsuit may be used in this case solely with respect to enforcement of the Agreement, in the event necessary.

In the event that Final Approval of the Settlement Agreement is not obtained or this Agreement does not become effective or is deemed null and void, nothing herein shall be deemed to waive any of the Class's claims or NASA Goddard's objections and defenses, including but not limited to objections to provisional class certification, and neither this Agreement nor the presiding Administrative Judge's preliminary or final approval hereof shall be admissible in any court regarding the propriety of class certification or regarding any other issue or subject of this case.

F. Conflicts

Due to Class Counsel's continuing representation of the Class, their receipt of confidential information regarding NASA Goddard during this case, and their continuing receipt of such confidential information during the term of this Agreement, Class Counsel agree not to undertake any representation (i) during the term of the Agreement that would create a conflict of interest; or (ii) at any time that would involve the use of NASA Goddard's confidential information for purposes unrelated to the enforcement of this Agreement.

G. Confidentiality and Return of Documents

Class Counsel acknowledge that during the course of this case they have received, and may hereafter receive in connection with the monitoring of this Agreement, confidential information regarding NASA Goddard and its personnel, including, without limitation, internal memoranda, personnel plans, programs, policies and procedures, computerized data, and other information. The parties, their retained experts, their consultants and attorneys (and all other signatories), and the agents of each of them, shall continue to be bound by the terms of the confidentiality agreement throughout the term of this Agreement and thereafter. The Class Agent, Mediation Representatives, Class Counsel, their experts and consultants and others retained by them, as well as the agents of each of them, hereby agree not to disclose any confidential information that may have been or may hereafter be received from NASA Goddard in connection with the litigation, mediation, or settlement of this case, including, without limitation, all information provided pursuant to the terms of this Agreement. Class Counsel shall be responsible for advising their experts, outside consultants, and any other individual acting for, on behalf

of, or at the request or direction of Class Counsel, including the Claims Administrator, of the confidentiality provisions of this Agreement and shall require that each such individual sign a confidentiality agreement substantially in the form of Exhibit 4, and shall promptly provide a copy of such signed agreement to counsel for NASA Goddard.

Counsel of record for each party shall, not later than thirty (30) days after the expiration of the three-year term of this Settlement Agreement, make available to counsel for the other party or destroy all documents (and copies of documents) and computer discs or data (and copies thereof) that were produced by the other party in the course of the litigation, mediation, or settlement of this case or the implementation of this Agreement, including all copies thereof that have been provided to or are in the possession of the party's expert(s) or consultant(s). Counsel for the parties are permitted to retain such information during the term of this Settlement Agreement solely for the purposes of claims administration, allocation of monetary relief to be paid from the Settlement Fund, and implementation and monitoring of compliance with this Agreement.

H. Approval of Settlement Agreement as Written

It is an express condition of this Settlement Agreement that the Class described in Part II.D.1 of this Agreement be bound by the body of this Agreement, and that it be approved by the presiding Administrative Judge as written. The parties have bargained for the terms in this Settlement Agreement. If the presiding Administrative Judge does not approve this Settlement Agreement as written, the party that is adversely affected by the disapproval of any provision of the Agreement may elect to file for reconsideration and/or to withdraw from the Agreement, which shall then be deemed null and void.

I. Interpretation of Settlement Agreement

1. Nature of Agreement

This Settlement Agreement is a contract and shall, on approval by the presiding Administrative Judge, also constitute an order of the Commission, and all of its provisions shall be enforceable by the parties as an order of the Commission, (subject to the terms set forth in Part IV of this Agreement regarding Enforcement).

2. No Displacement

While triggered by claims of race discrimination, the provisions of this Settlement Agreement are intended as, and are properly interpreted as, benefiting all NASA Goddard employees by promoting fairness, consistency and objectivity in the administration of employment practices. No employee will be displaced from his or her job, lose opportunities for a merit-based promotion, or receive diminished opportunities for advancement of any kind as a result of any provision of this Agreement.

2. No Modification of Title VII Requirements

Nothing in this Settlement Agreement may be taken as modifying either the statutory or regulatory procedures pertaining to initiating and maintaining administrative and judicial proceedings under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*, or the federal civil service laws.

3. Payment for Fees, Costs and Expenses

Whenever this Settlement Agreement provides for NASA Goddard payment of any costs, fees or expenses (including, without limitation, attorneys', experts' and administrators' fees, costs and expenses, but excluding the past attorneys' fees and expenses to be paid from the Settlement Fund as provided in Part III.B of this

Agreement), such payments shall be subject to the terms and conditions following, and any disputes regarding the same subject to the enforcement provisions of Part IV.

(a) Detailed Invoice Required

Prior to any such payment, NASA Goddard shall be provided with a signed statement for such work, which statement shall describe in reasonable detail the work performed, the date(s) on which the work was performed, the identity of the person(s) who performed such work, the time expended, and the expenses incurred; provided, however, that nothing contained herein shall require the disclosure of information subject to the attorney-client privilege or any other legally recognized privilege.

(b) No Entitlement to Unspent Funds

The purpose of NASA Goddard's payment of fees, costs, and expenses is to compensate Class Counsel for work performed and to reimburse Class Counsel for certain specific, actual out-of-pocket expenditures that Class Counsel makes or would be required to make if NASA Goddard had not agreed to pay such fees, costs, and expenses. The dollar amounts specified in provisions of this Agreement authorizing such NASA Goddard payments are intended to establish an outside limit on NASA Goddard's obligation to pay fees, costs, and expenses, even if the actual amounts of such fees, costs, and expenses incurred are greater than the amount of the dollar cap specified. In the event that the amounts of fees, costs, and expenses actually incurred for a particular purpose are less than the maximum amount specified for that purpose for a particular year or for the term of the Agreement, any unspent funds for that purpose in one year shall carry forward one year to the next year; however they may not be used to pay any other fees, costs, or expenses, nor shall they carry forward beyond one year.

III. RELIEF

A. General Equitable Relief

1. General Provisions

(a) Purpose and Scope

The purpose of these equitable measures is to provide all NASA Goddard non-managerial, non-supervisory scientists and engineers, including Class Members, with advancement opportunities that are, to the greatest extent possible, based solely on merit. To this end, the equitable relief described herein may encompass every Directorate, Code and their subordinate echelons at NASA Goddard. However, nothing in the following provisions, including use of the word “employees,” is intended to require modification of NASA Goddard’s procedures and/ or policies except with respect to those associated with non-managerial, non-supervisory scientists and engineers eligible for promotion to GS-14 and/or GS-15 positions.

(b) Computation of Time

In computing any period of time prescribed or allowed under this Settlement Agreement, the period of time shall be computed in terms of calendar days unless otherwise noted.

(c) Target Dates

The parties recognize the importance of timely implementation of the equitable relief provided under this Settlement Agreement. The schedule set forth in this Agreement is the schedule for implementing the injunctive relief, and is based on the parties’ current best estimates of the time required for such implementation. NASA Goddard will make good faith efforts to meet that schedule. The parties recognize,

however, that notwithstanding NASA Goddard's good faith efforts, it may become necessary to extend the implementation schedule for some elements of the injunctive relief. NASA Goddard agrees to provide reasonable advance notice, at least within thirty (30) days of the deadline barring unforeseen circumstances beyond Goddard's control, to Class Counsel in the event that it is unable to meet any aspect of the implementation schedule, and the parties agree to cooperate in good faith in seeking to agree on necessary changes. If the parties are unable to reach agreement and the extension contemplated by NASA Goddard on any item exceeds thirty percent (30%) of the total time permitted under this Settlement Agreement for that item, Class Counsel may bring the matter to the Commission's attention for resolution pursuant to Part IV of the Agreement. In the event that Goddard does not meet its implementation target dates under this Settlement Agreement, for any such item, the expiration of the Agreement for the provisions corresponding to the implementation of such injunctive relief shall be delayed by the identical length of time.

The parties shall notify the Commission of any agreed modification of the schedule set forth herein that exceeds thirty percent (30%) of the total time permitted for any item, and of the corresponding extension of the term for the relevant Settlement Agreement part. The Parties shall not be required to notify the Commission of any modification that is less than thirty percent (30%) of the total time permitted under the Agreement for implementation of any item.

**(d) Selection of Independent Expert and Independent
Mediation Expert**

Goddard has retained Dr. Elaine Pulakos of PDRI, Inc. as an Independent Expert to assist it in the implementation of the Settlement Agreement. This Independent Expert

shall assist in: (1) evaluating the existing performance management system; and (2) developing and implementing a revised performance management system, pursuant to Part III.A.2 & 3 of this Agreement.

Goddard has also retained Edna Povitch of the Center for Dispute Settlement as an Independent Mediation Expert to assist it in the implementation of the Settlement Agreement. This Independent Mediation Expert shall assist in: (1) evaluating the existing alternative dispute resolution system for informal equal employment opportunity (“EEO”) complaints at Goddard; and (2) revising, and implementing such revisions pursuant to Part III.A.5 of this Agreement.

If Goddard with reasonable justification decides to use another consultant to perform the requirements of this part of the Agreement, the selection(s) shall be governed by subpart “e” below. Goddard shall be responsible for all fees and expenses relating to the Independent Expert and the Independent Mediation Expert.

(e) Outside Consultants

Wherever this Settlement Agreement results in the hiring of an outside consultant, the following procedures shall govern: (1) Goddard shall provide Class Counsel with the names and curricula vitae of individuals responding to its request for proposal or otherwise under consideration by it; (2) Goddard shall identify its consultant of choice, taking into account suggestions, if any, by Class Counsel, and shall provide Class Counsel with the identity of the selectee and documentation or other information concerning the consultant’s qualifications, credentials, and experience; (3) Class Counsel shall review Goddard’s selection and provide any comments concerning the selection to Goddard within ten (10) days of receiving such information; (4) Goddard shall consider

the comments of Class Counsel in moving forward with the retention of the outside consultant; and (5) if Class Counsel raises concerns about Goddard's consultant of choice, and Goddard, having considered such concerns, decides to proceed with the retention of such consultant, Goddard shall so notify Class Counsel and shall provide Class Counsel with a good faith written justification for its decision.

2. Goddard's Performance Management System

A principal aim of NASA Goddard's performance management system is non-discrimination and fairness to all employees. A process to reform NASA Goddard's performance management system to ensure compliance with this goal, subject to applicable federal law and regulations and collective bargaining agreements, is currently underway, and all parties agree that it should continue.

(a) Schedule and Content

To expedite the reform process, NASA Goddard agrees to use its best efforts, and commit sufficient time and resources, to produce and implement a revised and objective, non-discriminatory performance management system within one year from the Effective Date; unless, following consultation with and approval by Class Counsel, and on recommendation of the Independent Expert, Goddard determines that this time period is inadequate. In such circumstances, Class Counsel shall not withhold its approval unreasonably. Goddard's reliance on this provision shall be subject to the same principles for extending the duration of the Settlement Agreement as are set forth in Part III.A.1.c.

For purposes of the Settlement Agreement, the performance management system encompasses all processes governing: (1) accretion and career ladder promotions; (2)

awards; (3) training; and (4) performance appraisals. The revised process shall provide for, but is not limited to, objective measures of performance, application of standards consistent with those promulgated by the Office of Personnel Management, standardized evaluations and assessment forms, feedback to employees including in the form of annual reviews, performance goals, an appeals process, supervisory accountability, and training for NASA Goddard employees. Additionally, a component of reviews, including for supervisors of Class Members, shall include an assessment of performance with respect to equal employment opportunity issues (“EEO component”) as a critical element in the performance appraisal process. No manager or supervisor of Class Members shall be eligible for promotion for a period of one-year following the appraisal if he or she receives an unsatisfactory score on such component.

(b) Expert Consultation

An Independent Expert has been selected to provide consultation services in accordance with the principles of Part III.A.1-3 of the Agreement. During the redesign process, the Independent Expert shall provide continuing advice and guidance to the team concerning standards and procedures for the purpose of ensuring fairness and non-discrimination in NASA Goddard’s performance management system. Goddard shall work cooperatively and continually with the Independent Expert throughout the redesign process.

When the NASA Goddard team, working with the Independent Expert, reaches an agreement regarding the performance management system redesign, and within six (6) months from the Effective Date, it shall forward the final redesign proposal to Class Counsel; unless, following consultation with and approval by Class Counsel, and on

recommendation of the Independent Expert, NASA Goddard determines that this time period is inadequate. In such circumstances, Class Counsel shall not withhold its approval unreasonably. NASA Goddard's reliance on this provision shall be subject to the same principles for extending the duration of the Agreement as are set forth in Section III.A.1.c. above.

On receipt of the redesign proposal, Class Counsel shall in turn evaluate the proposed revisions and provide comments and recommendations concerning them within 45 days. If the Independent Expert believes that the NASA Goddard team is failing to adopt a significant recommendation or is seeking to adopt an inadequate measure or measures, she shall provide written comments and recommendations to NASA Goddard and Class Counsel. Thereafter, the NASA Goddard team shall consider the comments and recommendations, and may only reject implementation of such recommendations if it can establish good faith reasons for believing that they will not result in greater fairness and non-discrimination in the NASA Goddard performance management system, or, if the cost to NASA Goddard of any particular recommendation is unreasonable in view of the benefits. If Goddard does reject any recommendation by the Independent Expert, it shall promptly provide a comprehensive written explanation of its reasons to the Independent Expert and Class Counsel. In the event, if any, Class Counsel disagrees with the bases for NASA Goddard's rejection of recommendations, if any, then the Enforcement Provisions of this Settlement Agreement shall apply.

(c) Standards Governing Review and Granting of Promotions

Beginning with the Effective Date and continuing under the revised performance management system, the factors to be considered in determining accretion of duty promotions shall include the following.

i. Accretions

Accretion of duties promotions are warranted only when an employee has assumed new duties or the nature of the employee's work has changed, resulting in the need to reclassify that employee's position to reflect the fact that the employee is functioning at a higher level. Specifically, accretion of duties promotions are warranted and may be approved only in the following limited circumstances: 1) the employee's position is to be reclassified because of enhanced duties and/ or responsibilities; 2) there is no recognized promotion potential beyond the higher grade to which the accretion of duties promotion is proposed; 3) the employee's old position is absorbed into the new position; and 4) the employee continues to perform the same basic functions and the new duties and/or responsibilities represent an enhancement of the old duties that has occurred for a significant time, i.e., the time it would generally take for any qualified individual to become competent at the higher level of responsibility.

In addition to the above, NASA Goddard adopts the following as guiding principles for accretion of duties promotions, and shall with the assistance of the Independent Expert, implement systems for effectuating each in its revised performance management process with a goal of ensuring equal opportunity for obtaining grade-enhancing work:

- Supervisors and managers are expected to communicate regularly and openly with all employees within their area of responsibility about what job assignments are, or may become, available within their area of responsibility;
- Supervisors and managers are expected regularly to solicit interest from all employees within their area of responsibility regarding taking on the duties of their work unit;
- Supervisors and managers should assign duties so as to balance work among all similarly situated employees and accurately record such work as performed;
- Supervisors and managers are expected to communicate regularly with all employees in their area of responsibility about new hires, departures, promotions, details, temporary assignments, changes in staffing and workload allocations; and
- The performance evaluations of supervisors and managers shall include compliance with their obligations under these principles.

(d) Individual Development Plans

Within sixty (60) days after the Effective Date, NASA Goddard shall disseminate a global e-mail message regarding the availability of Individual Development Plans (“IDP”s), and shall encourage the use of these career enhancement tools by both employees and supervisors. Supervisors shall be required to offer employees a meeting at least once per year, to discuss and/or establish an IDP. IDPs shall be signed by both the employee and supervisor, identify the career objectives of the employee, consistent

with NASA Goddard's mission, relevant assignments and training (on-the-job and NASA-sponsored), and any other grade-enhancing duties or responsibilities that are available. NASA Goddard shall explore and implement ongoing methods of communicating with employees about IDPs, such as workshops, presentations at NASA Goddard seminars and meetings.

Within one year after the Effective Date, and in consultation with Class Counsel, NASA Goddard shall develop and administer an employee survey designed to obtain candid views from employees on the IDP process, including whether the supervisor offered and provided a full and fair opportunity to establish a IDP, and if established, whether (1) the process was interactive and the supervisor provided information and guidance about opportunities available and appropriate to serve the employee's career objectives; and (2) to what extent opportunities and job assignments were available that were consistent with the provisions of the IDP. The surveys shall be confidential and employees will be informed that their individual responses will not be shared with their first-line supervisors. Goddard shall administer the survey within sixty (60) days of each annual anniversary of the Effective Date, and shall provide the aggregate results of the survey to NASA Goddard division and directorate heads and Class Counsel, without employee name identification, not later than thirty (30) days after such results are tabulated.

3. Training and Education

(a) Goddard shall:

i. in consultation with the Independent Expert, train its supervisors and managers in all aspects of the redesigned performance management

system prior to its implementation, and shall train new managers and supervisors within three (3) months of their assignment of responsibilities as supervisors or managers;

ii. in consultation with the Independent Expert, provide web-based or face-to-face training within three (3) months of implementation to its employees in all aspects of the redesigned performance management system and offer face-to-face training annually thereafter;

iii. train its supervisors and managers regarding the purpose and process of Individual Development Plans;

iv. provide career enhancement training to employees, to include training on the effective preparation of IDPs and career development;

v. in conjunction with an outside consultant, provide all supervisors and managers with EEO and diversity training, which shall incorporate training on bias awareness, perception, and job assignments. Such training shall be completed within twelve (12) months of the Effective Date, and a refresher training provided to each manager or supervisor every two years after initial training. New supervisors and managers shall receive such training within three (3) months of commencing supervisory or managerial duties and shall also receive refreshment training;

(b) In conjunction with the Independent Expert, and following consultation with Class Counsel, Goddard shall within six months of the Effective Date adopt and implement measures to make accessible to Class Members on a fair and non-discriminatory basis, participation in its “management-track” training programs, including but not limited to, the following Goddard Programs: Council for Excellence in

Government; Project Management Development Emprise; Systems Engineering Education and Development (“SEED”) Program; Executive Leadership Program for Mid-Level Employees (formerly Women’s Executive Leadership Program); and the following Agency Sponsored Programs: Senior Executive Service Candidate Development Program (“SESCDP”); Project Management Development Process (“PMDP”); PMDP/Accelerated Leadership Option (PMDP/ALO); and Professional Development Program; and the following NASA Goddard development foundation courses: Goddard Leadership Education Series (GLES); Technical Managers Training (TMT); and Management Education Program (MEP).

4. Reductions in Force

In the event of a Reduction in Force (“RIF”), NASA Goddard shall provide an informational session to all affected employee(s) advising such employee(s) of their rights under federal laws and regulations and relevant collective bargaining agreements. Such session shall be provided sufficiently in advance of such RIF as to provide the employee(s) with meaningful opportunity to exercise such rights if so elected.

5. EEO ADR Process

NASA Goddard agrees to evaluate and redesign its alternative dispute resolution (“ADR”) process for informal equal employment opportunity (“EEO”) disputes. An Independent Mediation Expert has been selected in accordance with Part III.A.2 of this Agreement to provide consultation services during this process at NASA Goddard’s expense. NASA Goddard shall work cooperatively and continually with the expert throughout the evaluation and redesign process. The redesigned process shall continue to offer alternative dispute resolution services to EEO complainants at the informal EEO

complaint stage – either through the EEO Office, or an Office of Dispute Resolution.

Selection of the mediation service provider for the redesigned process is subject to Part III.A.1.d of this Agreement.

When the NASA Goddard team, working with the Independent Mediation Expert, reaches an agreement on the ADR redesign process, and within six (6) months from the Effective Date, it shall forward the final redesign proposal, including plans for its implementation, to Class Counsel, who shall within forty-five (45) days evaluate the Independent Mediation Expert's findings and recommendations for the redesigned system and provide comments and recommendations concerning them. Class Counsel may consult with the Independent Mediation Expert during the evaluation process. Thereafter, the Goddard team shall consider the comments and recommendations. In the event, if any, Goddard decides to proceed notwithstanding Class Counsel's comments and recommendations, Goddard shall so notify Class Counsel and provide Counsel with a good faith written justification for its decision. Goddard shall implement the redesigned ADR process within twelve (12) months from the Effective Date.

6. Monitoring

(a) Monitor Roles

NASA Goddard's internal monitor of compliance with the terms of this Settlement Agreement shall be the Associate Center Director, Goddard Space Flight Center. The Associate Director may delegate tasks consistent with the provisions of this Agreement, including to an outside consultant; except that the Associate Director shall be familiar with all issues presented at, and attend, all meetings convened under subpart "d" below.

(b) Publication of Promotions

At least on a semi-annual basis, NASA Goddard shall publish announcements on all promotions. Such announcements, posted on NASA Goddard's Office of Human Resources ("OHR") website for employees – with a clearly designated link on the OHR homepage -- shall include statistical data on the demographics of promotions, as well as the identities and branch locations of scientists and engineers promoted to the GS-14 and GS-15 levels, and the type of promotion received.

(c) Data and Analysis

During the term of the Settlement Agreement, NASA Goddard and Class Counsel shall statistically monitor the revised performance management system to determine if there is a legally statistically significant disparity between the promotion rates of African American and Caucasian scientists and engineers to the GS-14 and GS-15 levels. Class Counsel shall also monitor the development and efficacy of Goddard's compliance efforts under the injunctive provisions of this Settlement Agreement. In order to do so, NASA Goddard shall provide to Class Counsel during the three-year period of the Settlement Agreement, the documents and information outlined in subsections "i" and "ii" below.

On receipt, the Class's statistical expert will review the computerized data to determine if there is a statistical disparity and report to Class Counsel. Based on a review of the information by Class Counsel, Class Counsel may make recommendations to NASA Goddard for further remedial action. If NASA Goddard and Class Counsel do not reach agreement on resolution of such recommendations, the Enforcement Procedures set forth in Part IV shall apply.

i. Information and Documentation

In addition to the information and recommendations specified elsewhere in this Settlement Agreement, NASA Goddard shall provide to Class Counsel during the three-year period of the Agreement, the following documents and information:

- For each scientist or engineer in the GS-13 through GS-15 levels, semi-annual personnel and promotion statistics in computer-readable format on the sixth (6th), twelfth (12th), eighteenth (18th), twenty-fourth (24th), thirtieth (30th), and thirty-fourth (34th) month anniversaries of the Effective Date, encompassing the following:
 - At least one unique identifier, such as social security number or an employee identification number (if the requested data is in more than one database, the identifier for each individual must be the same in each database so the records for various databases can be linked);
 - Race;
 - NASA hire date;
 - Job history (includes each: job title held by the employee throughout his/her tenure and the dates of any changes in title; GS-level; salary; type of position (whether slash or not); award; detail; promotion; type of promotion (whether accretion or career ladder); and Code;
 - Performance evaluation ratings; and
 - Education;

- A list of the names and grades of each scientist or engineer reviewed under the current employee promotion eligibility review undertaken pursuant to Part III.C.2 of this Agreement, containing the same unique identifier as above, and the results of the review, on the ninety (90) day, five (5) month, and twelve (12) month anniversaries of the signing of the Agreement;
- Semi-annual data (as scheduled above) on the number of EEO complaints. This information provided shall be statistically aggregated information concerning complaints; nothing in this provision requires NASA Goddard to reveal the identities of persons involved in the EEO complaint process;
- Annual data in computerized format on the number and ethnicity of participants in each of NASA Goddard's "management track" training programs, as defined in Part III.C.4 of the Agreement. Such data shall use at least one identifier common to the personnel and promotions statistics data, e.g., social security number, such that the databases can be linked (on the twelfth (12th), twenty-fourth (24th), thirty-fourth (34th) month anniversaries of the Effective Date);
- All training materials used pursuant to Part III.A.3 of this Agreement, semi-annually;

- Summaries of any EEO complaint processing and/or mediation surveys conducted pursuant to the ADR process, semi-annually, redacted if necessary for compliance with the Privacy Act; and
- The results of the IDP surveys administered to employees (within thirty (30) days after the aggregate survey results are tabulated).

ii. Items to be Provided

Class Counsel may request additional existing documents and information not listed above during the three-year period of this Settlement Agreement for consideration in making its recommendations. If NASA Goddard approves such request, Class Counsel shall be provided with access and sufficient time to inspect the above records within thirty (30) days of its written notice to NASA Goddard. If NASA Goddard denies such a request, it shall provide Class Counsel with a good faith written statement of its reasons for denying the request as unnecessary for monitoring and recommendation purposes.

iii. Privacy Act

Nothing in this Settlement Agreement shall be construed to impose an obligation on Goddard to make disclosures of information, absent an order from the presiding Administrative Judge, that violate the Privacy Act, 5 U.S.C. § 552a *et. seq.*

(d) Periodic Meetings

Class Counsel and the Associate Center Director shall meet every three months during the first year following the Effective Date of the Agreement, and every six months thereafter, to discuss and resolve any outstanding issues with respect to implementation and compliance with this Settlement Agreement. Any issues that may arise during the term of the Agreement with respect to individual Class Members shall be handled

according to the applicable procedures and processes identified in Exhibit 1 and the Enforcement Part of this Agreement; however nothing in the foregoing shall prohibit Class Counsel and the Associate Director or her designee from resolving such matters informally if they are willing and so able.

Two representatives of the Class are entitled to attend such meetings, but may be recused for employee-specific discussions. Two additional representatives from NASA Goddard are entitled to attend such meetings, including representatives from the Office of Human Resources and the Office of Chief Counsel. Any information obtained by Class Counsel or participating Class Members during these sessions shall be treated as confidential information pursuant to Part II.G herein and shall not be used for any purpose except for enforcement of this Settlement Agreement.

(e) Reports to the Presiding Administrative Judge

Class Counsel shall file a written report with the presiding Administrative Judge every twelve (12) months concerning the implementation of the provisions of the Settlement Agreement, and shall serve a copy of such report on the Associate Center Director and Goddard's Counsel. In turn, NASA Goddard's Counsel may file a written reply with the presiding Administrative Judge, if deemed necessary by NASA Goddard. If requested by the presiding Administrative Judge, Class Counsel and Goddard's Counsel shall appear before the presiding Administrative Judge to provide any additional information requested by the presiding Administrative Judge.

B. Monetary Relief

1. Creation and Administration of Settlement Fund

For the purpose of satisfying and settling all of the eligible claims of the Mediation Representatives, Class Agent, Class Members and Class Counsel, and if fully approved by the presiding Administrative Judge, NASA Goddard shall deliver to Class Counsel via electronic transfer into the Settlement Fund (the “Fund”) the sum of three million seven hundred fifteen thousand two hundred seventy-eight dollars (\$3,715,278.00) within thirty (30) days after Final Approval. The Fund shall be established as a qualified Settlement Fund under Part 468B of the Internal Revenue Code and shall be administered by Maia Caplan and Jessica Parks, who shall be the Settlement Fund Administrators and Trustees (“Administrators”) in accordance with Administrative Order No. 1, attached hereto as Exhibit 6.

The above deposit shall settle all Class Member claims for monetary relief, including compensation for lost wages and emotional distress, and is the sole payment that NASA Goddard shall be required to make to settle this case and the foregoing claims except for: (1) payment to the Claims Administrator in an amount not to exceed fifteen thousand dollars (\$15,000) for distribution of monetary awards and other services as set forth in Part III.B by the Claims Administrator; (2) payment to the class expert in an amount not to exceed fifteen thousand dollars (\$15,000) for computation of monetary and promotional awards by the Class Expert; (3) unless the parties agree otherwise after negotiation or mediation, or unless the presiding Administrative Judge orders in enforcing this Agreement, payment of consulting fees required to implement the Agreement including for the Independent Expert and Independent Mediation Expert in a

total amount not to exceed five hundred thousand dollars (\$500,000); (4) fees for mediators relating to enforcement matters; (5) payment of the employer portion of Federal Insurance Contribution Act (“FICA”) and taxes as provided herein and in Administrative Order No. 1; (6) required employer contributions to OPM for retirement annuity benefits; (7) Class Counsel fees and expenses for administration of the Fund and for monitoring of the Agreement post-Final Approval, in an amount not to exceed sixty-five thousand (\$65,000) for the first year of the Agreement and fifty thousand dollars (\$50,000) per year thereafter; (8) Class Counsel fees and expenses for enforcement of the Agreement as provided for under Title VII and determined reasonable by the presiding Administrative Judge on presentation of a fee petition; (9) Class Counsel fees and expenses for appeals of or challenges to the Agreement, if any, in an amount not to exceed fifty thousand (\$50,000) in total; and (10) pay raises and prospective and retroactive annuity benefits pursuant to promotions received under Part III.C of this Agreement. Nothing in the foregoing shall release NASA Goddard, however, from expending the necessary resources to implement internally the equitable measures mandated by Part III of the Agreement.

From the deposits and any income earned thereon, the Class Agent and Class Members may receive payments, and Class Counsel and all other non-Class Member payees to which Class Counsel is liable shall be paid all fees and reimbursed for expenses incurred, except as set forth immediately above. Tax reserves and an appeal fund may be created and set aside before allocating the Fund among eligible Class Members, claimants or payees, all in accordance with Administrative Order No. 1, the terms of which are incorporated herein and made a part of this Settlement Agreement.

The portion of the Fund designated to pay the claims of Class Members for back pay, emotional distress and prejudgment interest shall consist of two million two hundred eighty-six thousand, four hundred fifty-nine dollars (\$2,286,459.00) and any income derived thereon and shall be known as the “Claims Fund,” less any amount specified for the Tax Reserves and Appeal Fund. Thirty-three percent (33%) of the Claims Fund shall be allocated to pay claims for back pay, forty percent (40%) shall be allocated to pay claims for emotional distress, and twenty-seven percent (27%) shall be allocated to pay prejudgment interest with respect to the back pay awards. The portion of the Fund designated to pay the special service awards of the Class Agent and Mediation Representatives shall consist of five hundred thousand dollars (\$500,000.00) and any income derived thereon and shall be known as the “Contribution Fund.” The portion of the Fund designated to pay and/or reimburse Class Counsel and other non-Class Member payees to which Class Counsel is liable their reasonable fees, expenses and costs, shall be known as the “Litigation Fund.” The Litigation Fund shall consist of nine hundred twenty-eight thousand eight hundred nineteen dollars (\$928,819.00). Income as to all portions shall include income earned by the Fund pending distribution from it. The Administrators shall invest all portions of the Fund in interest-bearing United States Treasury securities, securities of agencies of the United States backed by the full faith and credit of the United States, Repurchase Agreements, and/or other interest-bearing instruments or accounts, pending distribution from the Fund. All portions shall be governed by Administrative Order No. 1.

The Litigation Fund shall cover fees, costs and expenses, incurred in connection with this litigation by Class Counsel through the date of Final Approval of this Settlement

Agreement. Notwithstanding the above, attorneys' fees, costs and expenses incurred by any person objecting to, or making a collateral or direct attack on the Agreement or on the actions of the Administrators of the Fund, shall be borne by that person and shall not be chargeable to either NASA Goddard or the Fund.

The Fund, including all of its portions, shall be deposited by NASA and administered by the Administrators as outlined in Administrative Order No. 1 within thirty (30) days of Final Approval. If, by whatever means, the Order finally approving the Settlement Agreement does not become a final order of the Commission, the Fund and any interest thereon shall revert to NASA Goddard.

2. Administrators' Administrative Responsibilities

In administering the Fund, the Administrators shall comply with the terms of the Administrative Judge's Administrative Order No. 1, as that order may in the future be supplemented or amended by the presiding Administrative Judge to administer and carry out the purposes of the Agreement, provided that no such supplementation or amendment shall alter the terms of the Settlement Agreement, including Goddard's payment obligations.

3. Exclusive Responsibility of Class Counsel

The identification of Class Members to receive monetary relief and distribution of such relief is the exclusive province of Class Counsel, acting on behalf of the Class, and shall be carried out pursuant to the procedures set forth in subparts 4 and 5 below following approval by the presiding Administrative Judge. NASA Goddard shall have no role in, nor shall it be held liable for, determining the distribution methodology, the determination of relief to be accorded each individual, or other aspects of the monetary

awards process, with the exception that NASA Goddard shall as set forth in other parts of this Agreement: (1) provide data relating to each Class Member's employment with it, for use in the distribution formula; (2) provide notice of the Agreement, the Fairness Hearing, and a copy of the Agreement, to Class Members; (3) provide notice of the Agreement to all current non-Class Member NASA Goddard non-managerial, non-supervisory scientists and engineers at the GS-13 and GS-14 levels; (4) calculate and pay all employer's portion of OPM-ordered back annuities; (5) pay to the Fund the employer portion of FICA and of any other taxes required by law within forty-five (45) days of receiving from the Administrators and/or Class Expert the portion of monetary relief allocated to wages for each Class Member; (6) pay the Claims Administrator and Class Expert consulting fees and expenses as previously limited; and (7) pay Class Counsel administrative, monitoring, and appeals fees and expenses, as previously limited. Nothing in this subpart is intended to relieve NASA Goddard of obligations under this Agreement that are specifically enumerated elsewhere in the Agreement.

4. Method of Identification of Class Members to Receive Monetary Relief

Class Counsel shall arrange for allocation of the Claims Fund and the Contribution Fund in accordance with the distribution methodologies set forth in Exhibit 5 and the provisions of this Agreement. Each Class Member shall receive the amounts calculated according to the distribution formula and additionally, the Mediation Representatives shall receive a pro rata share of the Contribution Fund. The Claims Administrator shall be responsible for distributing the monetary relief in accordance with the distribution formula and the provisions of this Agreement following approval by the presiding Administrative Judge and the Administrators.

Calculation of amounts due each Class Member according to the formula set forth in Exhibit 5 shall be performed by the Class Expert. In accordance with Exhibit 5, NASA Goddard shall provide Class Counsel and the Class Expert with personnel information as may be necessary to perform the requisite calculations to the extent NASA Goddard has not previously provided such information; all such information shall be treated as confidential information pursuant to the provisions of this Agreement.

5. Distribution of Monetary Awards to Class Members

Except with respect to calculation of the amounts due each Class Member (to be calculated by the Class Expert), the administration and distribution of monetary awards shall be handled by the Claims Administrator, which Class Counsel has retained at NASA's expense, to *inter alia*: (i) locate Class Members who are no longer employed by NASA Goddard and who NASA Goddard, after reasonable efforts, has been unable to locate; (ii) answer procedural questions from Class Members about the claims process under this Agreement through the use of a toll-free telephone number; (iii) provide notice to each Class Member of the proposed monetary award to be paid to that Class Member as determined by the Class Expert, and the amounts to be withheld from that payment, as well as release forms; (iv) address purely arithmetic challenges to award amounts; (v) procure executed releases and W-9s from each Class Member; and (vi) withhold and deposit all required income and employment taxes, including the employer portion of FICA and other taxes; (vii) prepare, file and pay the taxes associated with any required tax returns of the Fund; and (viii) prepare and distribute funds and W-2 and 1099-MISC tax forms to Class Members. NASA Goddard shall (1) provide notice of the Agreement, the Fairness Hearing, and a copy of the Agreement, to Class Members; and (2) provide of

notice of the Agreement to all current non-Class Member NASA Goddard non-managerial, non-supervisory scientists and engineers at the GS-13 and GS-14 levels.

If a Class Member who is entitled to monetary relief under this Settlement Agreement is deceased at the time of such distribution, the amount payable to such deceased Class Member shall be paid to his or her estate. If the Claims Administrator determines that there is insufficient information or proof regarding the deceased person's estate to permit such payment, the deceased person's share shall be distributed to the remaining Class Members on a pro rata basis.

6. Tax Consequences Of Monetary Relief

NASA Goddard shall retain responsibility to pay the employer share of FICA and any other taxes as required by law on monies paid from the Fund. At least forty-five (45) days prior to making a distribution to a Class Member, the Administrator and/ or Class Expert shall provide NASA Goddard with the amount of the distribution allocable to wages, and the amount of the employer portion of FICA and other taxes on such wages. Within forty-five (45) days of the receipt of such information, NASA Goddard shall deposit the amount into the Fund. The Claims Administrator shall deduct federal, state, and local taxes, employee retirement account contributions, Medicare taxes, and any other routine payroll deduction required by law from any amounts paid to Class Members, and shall deposit any withheld taxes along with the employer portion of FICA and any other taxes as required by law. For purposes of determining withholding requirements and the employer portion of FICA and other taxes, awards made to the Class Agent and other Class Members from the Claims Fund shall be deemed 40% compensation for emotional distress, 33% backpay, and 27% pre-judgment interest;

however, Class Members should consult their tax advisors in connection with this settlement concerning any estimated or additional tax payments that may be required or advisable. Attorneys' fees shall be deemed not taxable to the class. Neither NASA Goddard, Class Counsel, nor the Fund or Claims Administrators make any representation nor express any opinion as to the final taxability of the payments made to the Class Agent, any other Class Members, or any other recipient. Each recipient of an award shall be solely responsible for making payment to the appropriate taxing authorities, federal, state, and local, if any, for any additional employee tax liability on distributions, including liability resulting from any underpayment of taxes from the calculations performed by the Claims Administrator, or for seeking refund of any overpayment of taxes, provided, however, that NASA Goddard shall pay to the Fund any additional employer portion of taxes, interest or penalties determined to be owed on account of reclassification by the Internal Revenue Service or a court of any portion of a distribution as wages.

C. Promotional Relief

A minimum of twenty-two (22) promotion awards, and ten (10) participations in the Accelerated Leadership Program, shall be allocated amongst current, retired or retirement eligible (who have spent five (5) years or more at NASA Goddard immediately prior to retirement and are willing to retire) members of the Class according to the processes described below. No individual Class Member shall receive under any circumstance more than two promotion awards up to a GS-15.

The identification of retired or retirement-eligible Class Members to receive promotion awards is the exclusive province of Class Counsel, acting on behalf of the

Class, and shall be carried out pursuant to the procedures set forth below following approval by the presiding Administrative Judge. NASA Goddard shall have no role in determining the distribution methodology, or the proportion of relief to be accorded each individual. The determination of the methodology for distributing and distribution of promotion awards to current employees shall, however, be the exclusive responsibility of NASA Goddard, to be carried out consistent with the provisions herein.

1. Relief to Qualified Retired and Retirement-eligible Class Members

The parties have agreed that there shall be twelve (12) retroactive promotion awards to Class Members who are retired, or who are retirement eligible and have spent five (5) years or more at NASA Goddard immediately prior to retirement and are willing to retire within thirty (30) days of receiving promotion awards. The following procedures shall be used for identifying Class Members to receive promotion awards and for distributing and implementing such awards.

(a) Method of Identification of Class Members

Class Counsel shall determine retired and retirement-eligible Class Member eligibility for promotion awards as described in Exhibit 1, and in accordance with the methodologies set forth therein. Calculations concerning eligibility shall be performed by the Class Expert. NASA Goddard shall provide the Class Expert with the information specified in Exhibit 1, as may be necessary to perform the requisite calculations, within fifteen (15) days of Final Approval. All such information made available to Class Counsel and their Expert shall be considered Confidential Information. Class Counsel shall thereafter identify the Class Members to receive promotion awards in accordance with the procedures set forth in Exhibit 1.

(b) Implementation of Promotion Awards

Promotion awards under this subpart shall be implemented within sixty (60) days of the Effective Date of this Settlement Agreement or within sixty (60) days of the conclusion of the procedures described in Exhibit 1, whichever comes later. Such awards shall be retroactive to five years from date of retirement, and shall consist of an initial award such that the Class Member's pay at the higher grade rate shall be the equivalent of a two-step increase in the grade from which he or she was promoted, plus the automatic steps that would have accrued within the five years.

Class Members receiving a promotion award under this subpart shall, prior to implementation of such award, execute a release waiving any additional direct payments for back pay from Goddard. Such release is set forth in Exhibit 2. The Release permits NASA Goddard and the Class to allocate funds for back pay liability to the Claims Fund, which amount has been negotiated and will be distributed amongst the entire Class according to the formula set forth in Part III.B.4-5 above, and not directly to the individual recipients of Promotion Awards.

2. Relief to Current Employee Class Members

The parties have agreed that there shall be a minimum of ten (10) promotions accorded to current employee Class Members who are not eligible for retirement or elect not to retire. The following procedures shall be used for identifying Class Members to receive promotion awards and for distributing and implementing such awards.

(a) Method of Identification of Class Members and Implementation of Awards

NASA Goddard shall determine current Class Member eligibility for promotion awards in accordance with the methodologies set forth herein.

Within seventy-five (75) days of Final Approval of this Agreement, the Director of NASA Goddard's Applied Engineering and Technology Directorate ("AETD") shall complete a review of the promotion potential of each current employee Class Member who has one year or more time-in-grade and notify each Class Member of the review results. Within thirty (30) days of Final Approval, Branch Heads shall prepare promotion packages for all Class Members and provide them to the Director of AETD, who may consult with other Directors of regarding the promotion candidates, if needed.

Any Class Member determined to be immediately ready for promotion as a result of the review shall be promoted within five (5) months of Final Approval of the Agreement, or sixty (60) days after the Effective Date, whichever comes later. For Class Members who are determined to be ready for promotion within twelve (12) months of Final Approval, NASA Goddard shall provide them with near-term concentrated training and work assignments that, if successfully completed, shall result in those Class Members being promoted within the twelve-month period, or sixty (60) days after the Effective Date, whichever comes later.

Within twelve (12) months of Final Approval, or sixty (60) days after the Effective Date, whichever comes later, NASA Goddard, through its Directors of, shall review the promotion potential of all scientists and engineers at the GS-13 & 14 levels who are not Class Members and who have eight (8) years or more time-in-grade and promote those who merit promotion.

NASA Goddard shall provide Class Counsel with data on the promotions of Class Members and non-Class Members under this procedure as set forth in Part III.A.6 of this Agreement.

3. Relief to Class Agent

Class Agent Walter Flournoy shall receive one of the minimum of ten promotions accorded current employee Class Members if he elects to remain as a current employee at NASA Goddard and not to participate in the awards procedures set forth in subpart 1 above for retired and retirement eligible Class Members. In this case, the award shall be defined identically to those under subpart 2 above for current employees, except that Mr. Flournoy's award shall not be subject to the review process and is automatic and is given in recognition of his service as Class Agent.

The Class Agent shall notify NASA counsel in writing of his election decision within forty-five (45) days of Final Approval of this Agreement. If the Class Agent fails to so notify NASA of his election, he shall be deemed to have elected to remain a current employee for purposes of distributing the promotion awards under this Agreement.

4. Guaranteed Participation in Accelerated Leadership Program

In addition to the above, NASA Goddard shall identify at least ten (10) additional Class Members for guaranteed participation in its Accelerated Leadership Program (ALP). Under this program, the designated Class Members shall receive training and be teamed with NASA Goddard senior leaders for up to two-years, which training shall commence when the ALP commences operation in the Fall of 2002. If the Class Members successfully complete the Accelerated Leadership Program, they shall be reassigned to a full performance level of GS-14.

IV. ENFORCEMENT

In the event of a material breach of this Settlement Agreement, encompassing the breach of any part herein whether expressly designated as subject to Enforcement or not,

the following principles and procedures shall apply; except that the parties shall be entitled to seek administrative enforcement of this Agreement with respect to Target Dates immediately after pursuing the process set forth Part III.A.1 on Target Dates and, with respect to the final six (6) months of the Agreement, immediately.

A. Negotiation and Mediation

Prior to instituting any proceedings to enforce the provisions of this Settlement Agreement, Class Counsel shall provide written notice to the Associate Director and NASA Goddard Counsel, that specifically sets forth the ways in which Class Counsel believes that NASA Goddard is in violation of the Agreement and citing evidence in support thereof. If such notice is provided between three and thirty days prior to a meeting scheduled pursuant to Part III.A.6.d above, the issues shall be placed on the agenda for such meeting. If such notice is provided thirty (30) or more days prior to a scheduled meeting, then at either party's election, the issues that are set forth in the notice may be discussed at a meeting specially to be held within twenty (20) days of such notice.

The parties will attempt in good faith to resolve all enforcement issues through discussion and negotiation. If the parties are unable to resolve an issue raised in a written notice through discussion and negotiation, then NASA Goddard will provide a formal written response to Class Counsel within fifteen (15) days of the meeting at which the issue is discussed. The parties will participate regarding any unresolved enforcement issues in mediation with ADR, Associates L.L.C. within thirty (30) days of the date that a discussion is held on the issue. Mediation will be discontinued if the issue is not resolved within thirty (30) days of initiation of meditation, unless the parties mutually agree to

extend this period. If the parties are unable to resolve an issue through mediation, or the dispute exists in the final six months of the Agreement, then either party may pursue enforcement pursuant to 29 C.F.R. Section 1614.504.

V. PUBLICITY

In addition to the promises of confidentiality expressly set forth in Part II.G, the parties have negotiated and will issue Joint Press Releases that shall be made available to the news media following the presiding Administrative Judge's preliminary and final approval of this Settlement Agreement, subject to any necessary revision agreed on after final approval to reflect final approval dates, proceedings, and provisions. No counsel shall make any written or oral statements at any time that are inaccurate and/or inconsistent with the Joint Press Release (and any revisions thereto on final approval), nor shall Class Counsel advise or in any manner promote a Class Member to make an inconsistent statement.

VI. SEVERABILITY

Except as set forth below, if after Final Approval any term or provision of this Agreement, or the application thereof to any person or circumstances, is held to any extent to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Notwithstanding the above, if (1) all of the monetary relief provisions in Part III.B; or (2) all of the equitable relief provisions in Part III.A & C; or (3) the release/bar

provisions in Part II.D.3 of this Agreement are held to be invalid or unenforceable, the entire Settlement Agreement shall be null and void.

VII. COLLECTIVE BARGAINING

Consistent with the Federal Service Labor-Management Relations Act, 5 U.S.C. Chapter 71, the parties acknowledge that NASA Goddard's collective bargaining partners, the Goddard Engineers, Scientists and Technicians Association ("GESTA") and the American Federation of Government Employees ("AFGE") must be notified of any proposed changes to agency personnel or EEO policies covered by GESTA's or AFGE's collective bargaining agreements and that prior to implementation, any changes in policy impacting on provisions of the collective bargaining agreements may be negotiable. As such, GESTA and AFGE were notified of the negotiation sessions leading to this Agreement, and participated in several such sessions.

VIII. GOVERNING LAW

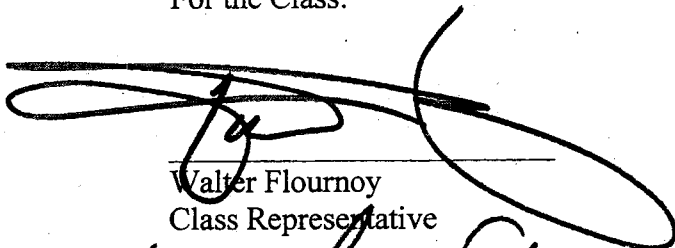
The parties agree that the validity, construction, and enforcement of this Agreement shall be governed by federal law.

IX. BINDING AGREEMENT

This Settlement Agreement is binding on all parties and their successors, assigns, representatives, and trustees.

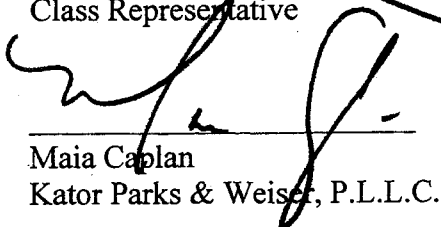
AGREED:

For the Class:



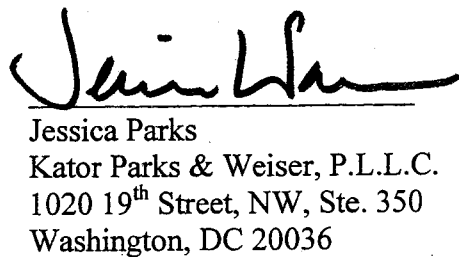
Walter Flournoy
Class Representative

4/24/02
Date



Maia Caplan
Kator Parks & Weiser, P.L.L.C.

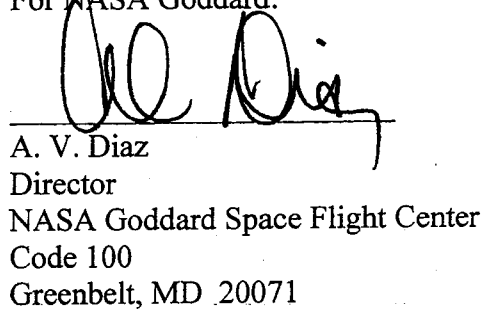
4/24/02
Date



Jessica Parks
Kator Parks & Weiser, P.L.L.C.
1020 19th Street, NW, Ste. 350
Washington, DC 20036

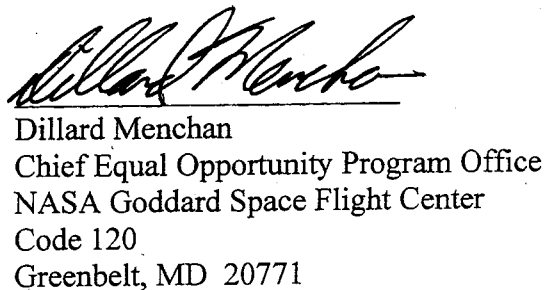
April 24, 2002
Date

For NASA Goddard:



A. V. Diaz
Director
NASA Goddard Space Flight Center
Code 100
Greenbelt, MD 20071

4/17/02
Date



Dillard Menchan
Chief Equal Opportunity Program Office
NASA Goddard Space Flight Center
Code 120
Greenbelt, MD 20771

4/22/02
Date

Dorothy C Ken

Dorothy Ken
Office of the Chief Counsel
NASA Goddard Space Flight Center
Code 140
Greenbelt, MD 20771

4/22/02
Date

EXHIBIT 1

Process and Formula for Identification of Qualified Class Members¹ to Receive Promotion Awards

1. So that Class Counsel may identify the Qualified Class Members entitled to receive a promotion award, within fifteen (15) days of Final Approval, Goddard will provide Class Counsel a database in readily usable format containing the following information for each Qualified Class Member:
 - a. Name and Social Security Number;
 - b. Current grade and step if retirement eligible, or if retired, grade and step at retirement;
 - c. Time in grade at GS-13 and GS-14 through February 25, 2002, or retirement;
 - d. Each grade change out of GS-13 or GS-14, including both promotions and demotions during the Qualified Class Member's tenure at Goddard through February 25, 2002, or retirement, and the date of each such change;
 - e. The number of annual "high ratings," as defined in paragraph 4 below, each Qualified Class Member received between April, 1991 and February 25, 2002; and
 - f. If the Qualified Class Member is retired, the retirement effective date.
2. Within forty-five (45) days of Final Approval, Class Counsel will make available to any Qualified Class Member, on request, a synopsis of the data received by Class Counsel from Goddard pertaining to that Qualified Class Member. Any Qualified Class Member desiring to receive this synopsis may do so by writing within forty-five (45) days of approval to "Administrator for NASA Goddard Class" at P.O. Box No. 10888, Tallahassee, Florida 32302-2888. Goddard shall also permit Class Counsel to post one representative of Counsel at a Goddard building most convenient to the Class on or about the thirty-fifth (35th) day following Final Approval so that Qualified Class Members may verify their data in person. Qualified Class Members have sixty (60) days from Final Approval to challenge in writing the accuracy of the data to be used in determining their eligibility for a promotion award, which challenge must be in writing, postmarked no more than 60 days following final approval, and addressed to "Administrator for NASA Goddard Class" at P.O. Box No. 10888, Tallahassee, Florida 32302-2888. Such

¹ The term Qualified Class Member refers only to retired or retirement eligible Class Members who have spent at least five years at Goddard immediately prior to their retirement, and who have not previous to this Settlement signed a valid release of or had finally adjudicated a race discrimination claim for non-promotion to a GS-14 or GS-15 non-managerial, non-supervisory position as a scientist or engineer. Those who have settled such claims or have had such a claim adjudicated may not be eligible for an award, or may be eligible for a reduced award.

challenge shall be strictly limited to demonstrable factual inaccuracies concerning dates of hire, retirement, time in grade, and the like.

3. Using the data identified above, within one hundred twenty (120) days of Final Approval, Class Counsel's expert will perform an analysis of Qualified Class Members currently in grades GS-13 and GS-14 to determine the appropriate time-in-grade to be used for each Qualified Class Member. The time-in-grade for each Qualified Class Member will be determined as follows:

a. For each Qualified Class Member, the expert will compile a list of grades, limited only to GS-13 and GS-14, that the Qualified Class Member served in between April 19, 1991 and February 25, 2002 or retirement. For each such grade, a calculation will be made of the length of time that such Qualified Class Member served in that grade during the entire time he or she worked in the federal civil service until February 25, 2002 or retirement. The time-in-grade used for each Qualified Class Member will be the longest amount of time that the employee spent in any single such grade.

For example, if an employee currently in grade 14 served in grades 13 and 14 during the period from April, 1991 to February 25, 2002, a calculation will be made of the amount of time spent in each of grades 13 and 14. The result might be as follows: GS-13, 48 months; GS-14, 188 months. For purposes of calculating the time-in-grade score, that Qualified Class Member would have a time-in-grade score of 188 months based on the amount of time served as a GS-14. If the employee had served 188 months as a GS-13, his time-in-grade score would be 188 months because it is based on the GS-13 grade.

b. All Qualified Class Members would be listed in order in accordance with their longest time-in-grade as calculated in paragraph 3(a). Thus, each employee will be placed in a combined list of all GS-13 and GS-14s, with their time-in-grade being used to place him or her in the correct order in relation to his or her peers. The Qualified Class Member with the longest time in grade would receive a score equal to the number of Qualified Class Members on the list. Then, moving from the top of the list to the bottom, each Qualified Class Member would receive one less point than the Qualified Class Member above him or her, with the Qualified Class Member with the shortest time-in-grade receiving one point.

For example, if there are 115 Qualified Class Members, the Qualified Class Member with the longest time-in-grade would receive 115 points. The Qualified Class Member with the next highest time in grade would receive 114 points, and so on. Ties would be dealt with by averaging the points available for the slots for which the Qualified Class Members are tied. For example, if there were 115 employees, those with the second, third and fourth longest time-in-grade would usually receive scores of 114, 113 and 112 respectively. However, if three

employees tied for the second longest time-in-grade, then each of them would receive the average of the above scores, or a score of 113.

4. For each Qualified Class Member, a calculation will be made as to the total number collectively of “Outstanding,” “Highly Successful,” and after 1997, “Pass” *plus* an employee performance award (collectively referred to as “high ratings”) annual ratings the employee received, limited to those received when the employee was in a GS-13 or GS-14 position, and further limited to those received following April 19, 1991 up to February 25, 2002. All Qualified Class Members would be listed in order of Qualified Class Member with the highest number of high ratings received. On the list, the Qualified Class Member with the highest number of high ratings received would receive a score equal to the number of Qualified Class Members on the list. Then, moving from the top of the list to the bottom, each Qualified Class Member would receive one less point than the Qualified Class Member above, and so on, with the Qualified Class Member with the fewest such ratings would receive one point. Ties would be addressed in the same manner as paragraph 3 above.

5. For each Qualified Class Member, a calculation also will be made by Class Counsel as to the total number of points received by the Qualified Class Member for his or her contribution to the prosecution and mediation of the case (“contribution points”). The maximum number of contribution points is equivalent to the maximum number of time-in-grade points. The formula for determining contribution points shall include such factors as service as: Class Agent; initiation and prosecution of the complaint; service as a Mediation Representative; attendance at attorney-client strategy sessions for mediation; substantive assistance to Class Counsel during mediation; and financial contribution to litigation fund. Qualified Class Members will not be ordered on a list descending by one point with respect to their contribution points; rather each Qualified Class Member will be eligible for the total number of such points available.

6. For each Qualified Class Member, the number of points he or she is assigned for high ratings pursuant to paragraph 4 above is added to the points assigned for time-in-grade and contribution. Qualified Class Members then are listed from highest to lowest number of points as calculated in this paragraph. *Subject to the approval procedures set forth in the paragraphs below*, promotions awards of one grade would be awarded to Qualified Class Members who are numbers one through 12 on the list; except that if the highest scoring Qualified Class Member has more than double the points of the lowest scoring Qualified Class Member numbering one through 12 on the list, such high scoring Qualified Class Member shall receive a two-grade promotion award and only Qualified Class Members one through 11 on the list would be promoted. If the next highest scoring Qualified Class Member receives more than double the points of the remaining lowest scoring Qualified Class Members on the list (numbers one through 11), then two Qualified Class Members would receive two-grade promotion awards and only Qualified Class Members one through 10 on the list would be promoted, and so on. Promotion award is as defined in Part III.C of the Decree.

For example, assume that there are five Qualified Class Members currently employed at Goddard in grades GS-13 and GS-14. Those five Qualified Class Members would be ranked against each other in terms of time-in-grade, number of annual highest ratings received and contribution points. The results might be as follows:

Qualified Class Member	Months Counted for Time-In-Grade	Highest Ratings (HR) Counted	Contribution Points	Total Points
1	33 months (2 points)	5 HRs (3 points)	5	10
2	46 months (3 points)	7 HRs (4 points)	1	8
3	88 months (4 points)	11 HRs (5 points)	5	14
4	17 months (1 point)	2 HRs (1 points)	3	5
5	121 months (5 points)	3 HRs (2 points)	3	10

Further, for purposes of this example, assuming there were five promotion awards to be granted, Qualified Class Member 3 would receive a two-grade promotion award, Qualified Class Member 1 a one-grade promotion award; Qualified Class Member 5 a one-grade promotion award; and Qualified Class Member 2 a one-grade promotion award. Qualified Class Member 4 would not receive a promotion award because Qualified Class Member 3 scored more than double his or her points. Qualified Class Member 1 would not receive a two-grade promotion award because Qualified Class Member 4 would be dropped from this list prior to calculation of Qualified Class Member 1's promotion award, and Qualified Class Member 1 did not score twice as high as the next lowest scoring Qualified Class Member.

7. After completion of steps one through six, Class Counsel shall promptly notify those Qualified Class Members of their qualification for a promotion award, and that their proposed award is being submitted to the presiding Administrative Judge for approval. Prior to submission of the proposed awards to the presiding Administrative Judge, retirement eligible Qualified Class Members will be given thirty (30) days from notice of their qualification for an award to elect in writing to Class Counsel whether they wish to accept the award and retire or to remain a current employee and decline the award. During this same thirty-day period, Qualified Class Members who do not qualify for a promotion award may appeal their non-qualification to Class Counsel in writing. Such Class Members will be provided with the mathematical computation of their own points exclusively (based on the previously approved personnel data), and the sole basis for upholding an appeal shall be a computational error. The appeal must be postmarked within thirty (30) days of mailing of the award notification, and mailed to "Administrator for NASA Goddard Class" at P.O. Box No. 10888, Tallahassee, Florida 32302-2888.

8. After completion of steps one through seven, Class Counsel shall file with the presiding Administrative Judge, under seal, a list of the Qualified Class Members to receive promotion awards and the type of award for approval, any appeals and responses thereto, along with the calculations and ranked list of Qualified Class Members.

9. All proposed awards are subject to adjustment pending resolution of any appeals and approval of the presiding Administrative Judge.

10. On the presiding Administrative Judge's approval of the promotion awards, Goddard shall effect the promotion awards according to the procedures and time line set forth in the Settlement Agreement.

EXHIBIT 2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

BALTIMORE FIELD OFFICE

10 South Howard Street, 3RD Floor

Baltimore, MD

_____)	
Walter Flournoy,)	
on behalf of himself)	
and all other persons similarly situated,)	
)	
Class Agent,	)	Agency No. NCN-92-GSFC-F064
)	
v.)	
)	
Sean O'Keefe, Administrator	)	EEOC No. 120-A2-1267
National Aeronautics and)	
Space Administration,)	
)	
Agency.)	
_____)	

RELEASE OF CLAIMS AGAINST NASA GODDARD

The release of claims is made and entered into this ____ day of _____, ____, by and between [Releasor] and the NASA Goddard Space Flight Center ("NASA Goddard").

Pursuant to the Settlement Agreement as approved by EEOC Administrative Judge Linda A. Kincaid on _____, 2002 in Flournoy v. O'Keefe, Administrator, NASA, EEOC No. 120-A2-1267X ("EEOC case") and dismissing the EEOC case and all related cases in their entirety on the merits, with prejudice,

I, [Name], a Class Member in the EEOC case, together with each and all of my representatives, heirs, successors, and assigns, hereby fully, finally, unconditionally and

irrevocably waive, release, remise, discharge and covenant not to sue NASA Goddard or any or all of its past or present predecessors, successors, parents, affiliates, subsidiaries and assigns, and their respective past or present directors, officers, employees, agents, attorneys and representatives, and anyone acting in concert with any of them ("NASA Goddard Releasees"), from or on any and all direct, indirect, representative, individual and/or class claims, allegations, actions, rights, obligations, liabilities and causes of action of whatsoever kind or nature, arising up to and including February 25, 2002, which arise out of or relate to my being eligible but not receiving on account of race a promotion from a GS-13 to a GS-14 or a GS-14 to a GS-15 position as a scientist or engineer at NASA Goddard, whether presently known or unknown, actual or potential, existing or contingent, suspected or unsuspected, apparent or concealed, not specifically excepted herein ("Claims"), including but not limited to,

- (i) any and all direct, representative, individual and/or class claims, allegations, actions, rights, obligations, liabilities and causes of action alleging race discrimination made by or on behalf of the Class Agent individually or on behalf of the Class as defined in the Settlement Agreement filed, or arising from or relating to matters or allegations which are the subject matter of this action, or that could have been made by or on behalf of the Class Agent individually or on behalf of the Class herein, whether known or unknown, actual or potential;
- (ii) any and all direct, representative, individual and class claims, allegations and causes of action, actual or potential, known or unknown, of race discrimination that either of the Class Agent or the Class Members made or brought or could have made or brought relating to their eligibility for and denial of promotion(s)

from the GS-13 to the GS-14 or from the GS-14 to GS-15 position) as a scientist or engineer at any time between April 19, 1991 and February 25, 2002 through or in any court proceeding or in any arbitration or other dispute resolution mechanism or through any complaints or charges filed with the Equal Employment Opportunity Commission ("EEOC") or any other federal, state, or local governmental body or authority, under any federal, state, or local statutory or common law, including, but not limited, to claims of race discrimination in promotion, training, and performance evaluations, and claims for damages, back pay or other monetary relief or benefits, or for injunctive, declaratory, equitable, compensatory, punitive or any other relief for any such alleged unlawful discrimination; and

- (iii) any and all direct, representative, individual and class claims, allegations and causes of action for attorneys' fees and costs that the Class Agent or the Class have made or could have made, as of February 25, 2002.

In signing this Release, I agree and acknowledge that a monetary payment and/or specific job relief are provided to me as full consideration pursuant to the terms of the Settlement Agreement and the claims resolution process provided for therein.

I acknowledge that I have been represented by legal counsel in the negotiation and preparation of the Settlement Agreement and all exhibits thereto (including this Release), that I understand the Settlement Agreement and all exhibits thereto (including this Release) and am fully aware of their content and legal effect, and that I have entered into the Settlement Agreement, and am executing this Release, freely, without coercion, based on advice of my legal counsel and my

own judgment and not in reliance upon any representations or promises made by NASA Goddard, other than those expressly set forth in the Settlement Agreement.

This Release shall become effective seven days after the signing of this Release. This Release shall incorporate the terms and conditions of the Settlement Agreement.

By signing this Release, I acknowledge and affirm (1) that I am competent, (2) that I have been afforded a time period of at least 21 days to review this Release with legal counsel of my choice and have done so, (3) that if I take fewer than 21 days to consider and execute this Release, I do so voluntarily, with the understanding that I will be accelerating its effective date, and (4) that I have read and understand and accept the nature, terms, scope and effect of this Release.

By my signature below, I represent that I understand that I am permitted to revoke this Release at any time during the period of seven days after I sign the Release. This Release will not be effective or enforceable and no payments will be made under the Settlement Agreement until the seven-day revocation period has expired without my having exercised my right of revocation.

By signing this Release, I acknowledge and affirm that I have carefully read and understand this entire document, that I have been advised to consult with an attorney prior to signing this Release, that no promises or inducements have been made to me except as set forth in this Release, and that I have signed this release freely and voluntarily, intending to be legally bound by its terms.

RELEASOR

SIGNATURE OF CLASS MEMBER

Sworn to before me this ____ day of
_____, 2002

Notary Public
My Commission expires _____

EXHIBIT 3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

BALTIMORE FIELD OFFICE

10 South Howard Street, 3RD Floor
Baltimore, MD

_____)	
Walter Flournoy,)	
on behalf of himself)	
and all other persons similarly situated,)	
)	
Class Agent,	)	Agency No. NCN-92-GSFC-F064
)	
v.	)	EEOC No. 120-A2-1267
)	
Sean O’Keefe, Administrator)	
National Aeronautics and)	
Space Administration,)	
)	
Agency.)	
_____)	

**RELEASE OF CLAIMS AGAINST NASA GODDARD SETTLEMENT
FUND AND ADMINSTRATORS OF THE FUND**

This Release of Claims against the NASA Goddard Settlement Fund and the
Administrators of the Fund is made and executed by the undersigned Class Member:

Recitals:

1. I am one of the Class Members as defined in the Settlement Agreement
(the “Agreement”) in the above-captioned class action complaint.
2. I wish to receive an award from the Settlement Fund (the “Fund”) created
pursuant to the Agreement, and I have been informed that I will receive an award from

the Fund if I sign and return to the Administrators of the Fund this Release and certain other documents.

3. I understand that I may be entitled to a fixed amount payment from the Fund. I also understand that the payment of the employee portion of all taxes on such payment is my sole responsibility.

NOW, THEREFORE, in consideration of the benefits to be provided to me under the Agreement, the receipt and sufficiency of which I acknowledge, I agree as follows:

On receipt of payment from the Fund, I, for myself, my heirs, executors, administrators and assigns, unconditionally, irrevocably, fully and finally release and forever discharge the Fund, the Administrators, and the Trustees from all liabilities and claims.

I KNOW AND FULLY UNDERSTAND THE CONTENTS OF THIS RELEASE AND EXECUTE IT FREELY, BEING FULLY AWARE OF ITS FULL AND FINAL EFFECT.

On penalty of perjury pursuant to 28 U.S.C. § 1746, I state that I am the person identified in the Release, that all of the factual statements herein are true and correct, and that my signature signifies acceptance of all terms of this Release.

Date: _____

Class Member's Signature

Class Member's Typed or Printed Name

Class Member's Social Security Number

EXHIBIT 4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

BALTIMORE FIELD OFFICE

10 South Howard Street, 3RD Floor
Baltimore, MD

_____)	
Walter Flournoy,)	
on behalf of himself)	
and all other persons similarly situated,)	
)	
Class Agent,	)	Agency No. NCN-92-GSFC-F064
)	
v.	)	EEOC No. 120-A2-1267
)	
Sean O’Keefe, Administrator)	
National Aeronautics and)	
Space Administration,)	
)	
Agency.)	
_____)	

**CONFIDENTIALITY AGREEMENT FOR CLASS STATISTICIAN AND ALL
OUTSIDE CONTRACTORS OR SUPPORT SERVICES RETAINED BY CLASS
COUNSEL IN CONNECTION WITH NASA GODDARD SETTLEMENT**

I am an individual or representative of a company retained by Kator, Parks & Weiser, P.L.L.C. (Class Counsel) for the purpose of providing assistance or administration services in connection with the implementation of the terms of the Settlement Agreement (“Settlement”) made between the parties to the above-referenced case. It is the position of NASA Goddard Space Flight Center (NASA Goddard) that all or some of the information or data that will be provided to me in the performance of duties associated with this case falls within the purview of the Privacy Act, 5 U.S.C.

552a. In order to provide services related to the above-referenced case, I agree to abide by the below provisions:

1. All written information, conduct, oral statements, e-mails or data provided to me by Class Counsel, counsel for NASA Goddard, Class members or any other individuals associated with the implementation of the Settlement shall be considered confidential. Said confidential information shall be used exclusively in connection with my performance of agreed upon tasks related to this case. Said confidential information shall not be disclosed to any person other than Class Counsel, counsel for NASA Goddard or individuals expressly authorized by counsel for either party who have signed this confidentiality agreement. No further disclosures may be made absent further order of the presiding EEOC Administrative Judge or a court of competent jurisdiction.

2. All documents or information generated by me in the process of performing services connected with this case shall be considered to be confidential and may not be released to any individual other than Class Counsel, counsel for NASA Goddard or individuals expressly authorized by counsel for either party who have signed this confidentiality agreement. All documents or information generated by me in the process of performing services connected with this case are to be disseminated and used only in connection with tasks related to the above-referenced case.

3. All documents, data or any other information generated by me in the process of providing services in connection with the above-referenced case shall be destroyed or returned to counsel for NASA Goddard within sixty (60) days of the expiration of the Settlement.

4. Nothing in this confidentiality agreement may be taken or construed as a

ruling or statement concerning the admissibility of any documents or information at any proceeding before the EEOC or any court of competent jurisdiction.

Date: _____

Signature

Typed or Printed Name

Business Telephone Number

EXHIBIT 5

Class Members' Monetary Distribution Formula

The two million two hundred eighty-six thousand four hundred and fifty-nine dollar (\$2,286,459) Claims Fund shall be distributed according to the process and formula outlined below. The five hundred thousand (\$500,000) Contribution Fund shall additionally be distributed in equal portions to the Class Agent and Mediation Representatives.

1. So that Class Counsel may identify the Class Members¹ entitled to receive a monetary award, the amount of such award, and appropriate withholding amounts, within fifteen (15) days of Final Approval, Goddard will provide Class Counsel a database in readily usable format containing the following information for each Class Member:

- a. Name and Social Security Number;
- b. Current grade and step, or if retiree or departed employee, grade and step at retirement or departure;
- c. Time in grade at GS-13 and GS-14 through February 25, 2002, or retirement or departure;
- d. Each grade change out of GS-13 or GS-14, including both promotions and demotions during the Class Member's tenure at Goddard through February 25, 2002, or retirement or departure, and the date of each such change;
- e. The number of annual "high ratings," as defined below, each Class Member received between April, 1991 and February 25, 2002;
- f. Whether the Class Member is a member of FERS or CSRS;
- g. Whether the Class Member has filed a formal race discrimination claim(s) against NASA Goddard for denial of a promotion to a GS-14 or GS-15 non-managerial, non-supervisory position as a scientist or engineer at any time between April 1993 to February 25, 2002, and if so, the date of such claim(s) and whether such claims have been settled or adjudicated²; and
- h. If the Class Member is retired, the retirement effective date, or if departed, the departure date.

¹This formula applies only to Class Members who have not previous to this Settlement signed a valid release of or had finally adjudicated a race discrimination claim for non-promotion to a GS-14 or GS-15 non-managerial, non-supervisory position as a scientist or engineer between April 1991 to February 25, 2002. Those who have settled such claims or have had such a claim adjudicated may not be eligible for an award, or may be eligible for a reduced award.

² NASA Goddard will seek express permission of any Class Member prior to releasing information regarding an EEO race complaint for promotion to non-managerial, non-supervisory GS-14 or GS-15 positions as a scientist of engineer that has not been adjudicated or settled. If the Class Member does not agree to release such information, it will not be released and the Class Member will be deemed to have waived his or her right to receive points under this formula for such claim(s).

2. Class Counsel will promptly make available to any Class Member, on request, a synopsis of the data received by Class Counsel from Goddard pertaining to that Class Member. Any Class Member desiring to receive this synopsis may do so by writing within thirty (30) days of approval to “Administrator for NASA Goddard Class” at P.O. Box No. 10888, Tallahassee, Florida 32302-2888. Goddard shall also permit Class Counsel to post one representative of Counsel at a Goddard building most convenient to the Class on or about the thirty-fifth (35th) day following Final Approval so that Class Members may verify their data in person. Class Members have sixty (60) days from Final Approval to challenge in writing the accuracy of the data to be used in determining their eligibility for an award, which challenge must be in writing, postmarked no more than 60 days following final approval, and addressed to “Administrator for NASA Goddard Class” at P.O. Box No. 10888, Tallahassee, Florida 32302-2888. Such challenge shall be strictly limited to demonstrable factual inaccuracies concerning dates of hire, retirement, time in grade, and the like.

3. Using the data identified above, within one hundred twenty (120) days of Final Approval, Class Counsel’s expert will perform an analysis of Class Members to determine the appropriate time-in-grade to be used for each Class Member. The time-in-grade for each Class Member will be determined as follows:

a. For each Class Member, the expert will compile a list of grades, limited only to GS-13 and GS-14, that the Class Member served in between April 19, 1991 and February 25, 2002 or retirement or departure from NASA Goddard. For each such grade, a calculation will be made of the length of time that such Class Member served in that grade during the entire time he or she worked in the federal civil service through February 25, 2002 or retirement. The time-in-grade used for each Class Member will be the longest amount of time that the employee spent in any single such grade.

For example, if an employee currently in grade 14 served in grades 13 and 14 during the period from April, 1991 to February 25, 2002, a calculation will be made of the amount of time spent in each of grades 13 and 14. The result might be as follows: GS-13, 48 months; GS-14, 188 months. For purposes of calculating the time-in-grade score, that Class Member would have a time-in-grade score of 188 months based on the amount of time served as a GS-14. If the employee had served 188 months as a GS-13, his time-in-grade score would be 188 months because it is based on the GS-13 grade.

b. All Class Members will receive one point for each year of his or her time-in-grade score, or pro rata portion thereof.

4. For each Class Member, a calculation will be made as to the total number collectively of “Outstanding,” “Highly Successful,” and after 1997, “Pass” *plus* an employee performance award (collectively referred to as “high ratings”) annual ratings the employee received, limited to those received when the employee was in a GS-13 or

GS-14 position, and further limited to those received following April 19, 1991 up to February 25, 2002. Class Members will receive one point for each such “high rating.”

5. For each Class Member, points will be assigned for their monetary contribution to the prosecution of the case. Class Members who contributed will receive 2 points for every \$100 paid (which funds covered expert fees and expenses).

6. For each Class Member, the number of points he or she is assigned pursuant to the time-in-grade calculation is added to the number of points assigned to the high-rating calculation and the number of monetary contribution points. Each Class Member will then have five (5) points subtracted from his or her total points for each promotion such Class Member received from grade 13 or 14 to grade 14 or 15 respectively between April 1991 to February 25, 2002. Any Class Member who was promoted on more than one occasion to a particular grade shall have deducted only a total of five points for promotions to that particular grade.

7. Each Class Member will then have added to the number of points he or she is assigned pursuant to paragraph five above five (5) points for any formal EEO race complaint such Class Member has made for denial of a promotion to a GS-14 or GS-15 non-management position as a scientist or engineer at NASA Goddard at any time during their tenure until February 25, 2002.

8. When the total net points for each Class Member have been determined, each Class Member’s distribution shall be equal to the Class Member’s total net points divided by the total net points of the class as a whole, multiplied by \$2,286,459.00.

9. After completion of steps one through eight, Class Counsel shall promptly notify those Class Members of their projected award, and that their proposed award is being submitted to the presiding Administrative Judge for approval. Within thirty (30) days thereafter, Class Members may appeal their award to Class Counsel in writing. Such Class Members will be provided with the mathematical computation of their own points exclusively (based on the previously approved personnel data), and the sole basis for upholding an appeal shall be a computational error. The appeal must be postmarked within thirty (30) days of mailing of the award notification, and mailed to “Administrator for NASA Goddard Class” at P.O. Box No. 10888, Tallahassee, Florida 32302-2888.

10. After completion of steps one through nine, Class Counsel shall file with the presiding Administrative Judge, under seal, a list of the Class Members to receive monetary awards and the type of award for approval, any appeals and responses thereto, along with the calculations and ranked list of Class Members.

11. All proposed awards are subject to adjustment pending resolution of any appeals and approval of the presiding Administrative Judge.

12. On the presiding Administrative Judge's approval of the awards, Class Counsel shall distribute the awards according to the procedures and time line set forth in the Settlement Agreement and Administrative Order No. 1.

EXHIBIT 6

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

BALTIMORE FIELD OFFICE

10 South Howard Street, 3RD Floor
Baltimore, MD

_____)	
Walter Flournoy,)	
on behalf of himself)	
and all other persons similarly situated,)	
)	
Class Agent,	)	Agency No. NCN-92-GSFC-F064
)	
v.	)	EEOC No. 120-A2-1267
)	
Sean O’Keefe, Administrator)	
National Aeronautics and)	
Space Administration,)	
)	
Agency.)	
_____)	

ADMINISTRATIVE ORDER NO. 1

This Administrative Order is entered pursuant to the Settlement Agreement (the “Agreement”) resolving Flournoy v. O’Keefe, EEOC No. 120-A2-1267X (the “Action”) to specify the purposes, terms, funding, operation and disbursement of the Settlement Fund, as delineated in the Agreement, to appoint the Trustees and Administrators of the Settlement Fund (the “Administrators”), and to establish and define the Trustees and Administrators’ duties, authority, responsibilities and obligations.

I. ESTABLISHMENT OF THE FUND.

A. Name, Status, and Trustees and Administrators of the Fund.

1. Name and Status as a Trust. The common fund agreed to

by the parties in the Agreement is hereby established and shall be known as the NASA Goddard Settlement Fund (the “Fund”). The Fund shall be a trust under the laws of the District of Columbia.

2. Fund Portions. The Fund will consist of the following three portions:

a. Claims Portion. One portion of the Fund shall be used to make distributions of back pay, prejudgment interest, and compensation for emotional distress to or on behalf of Class Members and for taxes (the “Claims Portion”). The Class Members include the Class Agent and all members of the Class as defined in Part II.D. of the Agreement. The Claims Portion shall consist of \$2,286,459.00, and any income earned by the Fund allocable to the Claims Portion. The Claims Portion shall be administered for the benefit of Class Members as a group and not for the benefit of individual Class Members, except insofar as they receive awards from the Fund.

b. Contribution Fund. One portion of the Fund shall be used to make distributions to or on behalf of Mediation Representatives (the “Contribution Portion”). The Mediation Representatives, as defined in Part II.A of the Agreement, include Walter Flournoy, William Weston, Pat McClain, William Reaves and Leroy Brown. The Contribution Portion shall consist of \$500,000, and any income earned by the Fund allocable to the Contribution Portion. The Contribution Portion shall be administered for the benefit of the Mediation Representatives as a group.

c. Litigation Fund. The third portion of the Fund shall be known as the “Litigation Portion.” It shall consist of \$928,819.00, and any income earned by the Fund allocable to the Litigation Portion. The Litigation Portion shall be

used to pay all attorneys' fees and expenses incurred by Class Counsel up through Final Approval of the Agreement.

3. Qualified Settlement Fund. The Fund, including all three portions and the income thereon, shall be a single qualified settlement fund within the meaning of Treas. Reg. Sections 1.468B-1 et seq. The division of the qualified settlement fund into three portions is for accounting and bookkeeping purposes only. NASA Goddard shall provide a statement to the Administrators that complies with Treasury Regulation § 1.468B-3(e), no later than February 15 of the year following each calendar year in which it made a transfer to the Fund. Such statement shall include (a) the legend "§ 1.468B-3 Statement" at the top of the first page, (b) NASA Goddard's name, address, and EIN, (c) the Fund's name, address, and EIN, (d) the date of each transfer, (e) the amount transferred, and (f) a description of any property transferred and its fair market value on the date of the transfer.

4. Trustees and Administrators. The oversight of the Fund shall be the responsibility of the Trustees who shall be Maia Caplan and Jessica Parks, who shall also serve as Administrators. These Trustees and Administrators are collectively referred to as "Administrators." The status and powers of the Administrators shall be as defined by this Order and the Settlement Agreement.

5. Other Fund Characteristics. The entire amount paid by NASA Goddard into the Fund pursuant to the Agreement, and all income generated by that amount, shall be in custodia legis and immune from attachment, execution, assignment, hypothecation, transfer or similar process by any third party or Claimant. Payments made to the Fund irrevocably vest in the Administrators at the time of

payment. Once the Fund vests in the Administrators, it is irrevocable during its term and NASA Goddard has divested itself of all right, title and interest, whether legal or equitable, in the Fund. The Administrators may make disbursements out of the Fund at any time and from time to time only in accordance with this Order.

6. Expiration of the Fund. Subject to paragraph II.D of this Order, the Fund, shall expire one year from the Effective Date, provided that the Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges and excises of any kind, including income taxes, and any interest, penalties or additions to such amounts, are, in the Administrators' sole discretion, finally determined and all such amounts have been paid by the Fund.

7. Alteration or Amendment. The Administrators may apply to the presiding Administrative Judge to alter or amend this Order at any time, or from time to time; provided, however, that no such amendment or modification shall in any way affect: (a) the purposes of the Fund; (b) the powers, duties and liabilities of the Administrators under this Order; (c) the total amount of money NASA Goddard is required to pay into the Fund; (d) the qualification of the Fund as a "qualified settlement fund" under Section 468B of the Internal Revenue Code and regulations there under; or (e) the terms of the Agreement.

B. Purpose and Funding of the Fund.

1. Purpose. The Fund is established exclusively for the purpose of: (a) making distributions as compensation for lost wages, prejudgment interest and emotional distress to Class Members and Mediation Representatives who execute and submit (i) a signed release in the form of Exhibit 2 to the Agreement ("NASA Goddard's

Release”), (ii) a signed release in the form of Exhibit 3 to the Agreement (“Administrators’ Release”), (iii) an executed W-9; and (iv) a Certificate of Residency; (b) making payments to Class Counsel and vendors that may have been engaged by Class Counsel to assist with Class Counsel’s prosecution of the case; and (c) paying related employment, withholding and other applicable taxes, in accordance with the Agreement.

2. Funding. The Fund consists of the amount of three million seven hundred fifteen thousand two hundred and seventy-eight dollars (\$3,715,278.00) plus any income earned on such amount and additional taxes as provided for in the Agreement to pay the employer portion of FICA and other taxes. Such amount is to be wire transferred by NASA Goddard into an account in the name of “NASA Goddard Settlement Fund” at Chevy Chase Bank within thirty (30) days of the Final Approval of the Agreement. The Fund also consists of any and all interest that accrues on the above-referenced deposits. The Administrators shall furnish a copy of this Order to Chevy Chase Bank.

II. Administration of the Fund.

A. Awards to Class Members.

All decisions concerning the awards from the Claims and Contribution Portions in settlement of the claims of the Class Members are the sole responsibility of the Administrators, subject to the Agreement and the provisions of this Order. All awards to Class Members and Mediation Representatives are confidential, and shall not be disclosed except on order of the presiding Administrative Judge other than to the Administrators, the presiding Administrative Judge, the awardees, and such legal and accounting personnel and other administration personnel, including at NASA Goddard, as

are required by the Administrators and by the awardee to know as part of the allocation and distribution process.

1. Award Elements. Each award from the Claims Portion to a Claimant shall include back pay, compensation for emotional distress, and prejudgment interest. The allocation shall be 33% back pay, 40% compensation for emotional distress, and 27% prejudgment interest.

2. Allocation Formula(s). The Claims and Contribution Portions shall be allocated among all Class Members and Mediation Representatives, respectively as provided for in the Agreement and Exhibit 5.

3. Distributions. The Administrators shall distribute awards to Class Members in three separate checks: one for back pay/ wages; one for compensation for emotional distress; and one for prejudgment interest.

4. Releases and Certificates of Residency. No award shall be paid to any Claimant prior to receipt by the Administrators of four documents executed by such Claimant: NASA Goddard's Release, the Administrators' Release, a completed IRS Form W-9, and a Certificate of Residency. The Administrators shall deliver a copy of each such Release to NASA Goddard after receipt by the Administrators.

B. Payments from the Litigation Portion.

The Administrators shall disburse funds from the Litigation Portion at such time as the Administrators deem appropriate. The Administrators shall pay from this Portion all income taxes attributable to interest earned on this Portion. The Administrators may disburse all moneys in the Litigation Portion, without creating any reserves.

C. Withholding, Payment and Reporting of Taxes.

The Administrative Judge, the Administrators and NASA Goddard recognize that there will be federal and state income tax and employment tax withholding and reporting requirements in connection with distributions to Class Members from the Fund. The Order sets out the responsibilities, liabilities and obligations of the parties with respect to any such withholding, payment and reporting requirements.

1. Definitions. For purposes of this Order, the term income taxes shall mean taxes imposed or measured by taxable income. Federal and state income tax withholding will be required on the wage portion of each distribution. In addition, withholding will be required on other portions of the distribution if backup withholding applies to a particular Class Member. Federal income tax will be withheld on the wage portion of each distribution at a rate of 27%, and on the other portions of each distribution at a rate of 30% if backup withholding applies. State income tax will be withheld at the applicable rate based on the residence of the Class Member. The term employment taxes shall mean both the employee and employer portions of FICA (Social Security and Medicare taxes), state unemployment taxes, and any other federal or state taxes imposed on employees and employers on or with respect to wages. The term state shall include the District of Columbia and the political subdivisions of any state.

2. Administrators' Responsibilities. Class Members shall have sole responsibility to federal and state taxing authorities for payment of taxes owing on all awards received pursuant to the Settlement. Notwithstanding the foregoing ultimate responsibility, the Administrators shall perform the following to withhold appropriately: (a) promptly after the award to each Class Member and Mediation Representative is determined, forward to NASA Goddard a list of awards and the amount constituting wage income, along with a computation of the employer's share of any employment taxes due on such awards; (b) determine the income tax and employee share of FICA to be withheld from each distribution to a Class Member or Mediation Representative and withhold and pay over such amounts; (c) deposit the employer's share of FICA and any other employment taxes required by law following receipt of such share from NASA Goddard; (d) make and file any reports or returns due with respect to such distributions to a Claimant or Mediation Representative, including distribution of IRS forms W-2 and 1099. The Administrators shall have the sole responsibility to determine and pay any income taxes owing with respect to the income earned by the Fund, and to allocate such payments appropriately between the Claims, Contribution and Litigation Portions. Additionally, the Administrators shall file returns and reports with the appropriate government agencies of the federal, state and local government with respect to such income and distribution to the Class Members.

3. NASA Goddard's Responsibility. NASA Goddard shall, following receipt of the allocation of awards to Class Members and computation of the employers' share in accordance with federal, state and local requirements, pay to the Fund the total amount of the employer portion of the employment taxes so calculated

within forty-five (45) days after receiving such information from the Administrators.

Such payment shall be in addition to the \$3,715.278.00 paid to the Fund.

a. Tax Reserves. The Administrators, if they deem appropriate, may request expedited review and decision by the IRS and/or the applicable state or local taxing authorities, with regard to the appropriateness of the returns filed for the Fund and may establish tax reserves to assure the availability of sufficient funds to meet the obligations of the Fund itself and the Administrators as fiduciaries of the Fund. Such reserve shall include 50% of the earnings of the Fund or such lesser amount that the Administrators determine to be sufficient. The tax reserves, including any income earned thereon, shall be used to meet the obligations of the Fund and to hold harmless the Administrators and NASA Goddard from any government fees, taxes, fine, charges and excise taxes of any sort, provided, however, that the tax reserves shall not be used to hold NASA Goddard harmless from failure to pay the employer portion of employment taxes. The tax reserve may be used to pay income taxes of the Fund as they are incurred. The creation of the tax reserve does not limit the amount of taxes that the Administrators may pay from the Fund or from any income earned thereon.

5. Cooperation of the Parties. The Administrators and NASA Goddard shall provide to and exchange with each other such information as shall be reasonably necessary to file notices, reports and returns and to make timely determinations of withholding obligations.

D. Termination of Fund.

1. Unexpended Money. If any unexpended balance exists in the Fund after all payments to eligible Class Members, Mediation Representatives, and Class Counsel, and of all tax and other obligations under the Settlement and this Order, then such balance shall be (1) distributed to Class Members pro-rata if feasible, (2) used to offset expenses and fees of Class Counsel and others that NASA Goddard is required to pay under the Agreement, or (3) contribute to the U.S. Treasury as unclaimed property.

2. Termination of Fund. Subject to paragraph I.A.6 of this Order, the Administrators shall, in their discretion, determine when their liability, and the liability of the Fund, for tax and other obligations described above has been fully satisfied, at which time the Fund may be terminated. Any balance remaining in the Fund at the time of such termination, including any amount remaining in the tax reserves established pursuant to paragraph D.2 above, when all obligations are satisfied, shall be distributed as provided in II.D.1.

III. Powers, Replacement and Indemnification of the Administrators.

A. Powers of the Administrators

1. Processing Claims. The Administrators shall have all the necessary powers, and take all necessary ministerial steps, to effectuate the settlement terms, including the satisfaction of all of the Class Members' claims. Such powers include but are not limited to developing a formula for the allocation of the Claims Portion in accordance with the Agreement, receiving and processing information from Class Members pertaining to their claims and allocations, investing, allocating and distributing the Fund, and in general

supervising the administration of the Agreement in accordance with its terms and this Order. The entirety of the Administrators' powers over the Fund are as expressly stated in this Order or future order.

2. Investment of Fund. Pending payment of awards to the Class Members and Class Counsel, the Administrators shall invest the Fund in United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury (collectively "U.S. or U.S.-backed securities"), in repurchase agreements collateralized by U.S. or U.S.-backed securities, or in other interest-bearing instruments or accounts. The Administrators shall invest any cash in the Fund in the foregoing investments as soon as practicable.

3. Reporting and Record Keeping. The Administrators shall keep detailed and accurate accounts of all investments, receipts, disbursements and other transactions of the Fund.

a. Inspection. All accounts, books and records relating to the Fund shall be open for reasonable inspection by the Administrators and by counsel for NASA Goddard. Included in the Administrators' records shall be complete information regarding actions taken with respect to the award of any payments to any Claimant; the nature and status of any payment from the Fund and other information which the Administrators consider relevant to showing that the Fund is being administered, and awards are being made, in accordance with the purposes of the Agreement, this Order and any future order.

b. Disclosure Limitations. The Administrators may establish protective conditions concerning the disclosure of information maintained by the

Administrators if publication of such information would violate any law, including rights to privacy. Any person entitled to such information who is denied access to the Fund's records may submit a request to the presiding Administrative Judge for such information. However, the Administrators shall supply such information to any Claimant as may be reasonably necessary to allow him or her to accurately determine his or her federal, state and local tax liabilities. Such information shall be supplied in the form and manner prescribed by relevant law.

c. Notice. Any notices or other information to be provided to NASA Goddard hereunder shall be provided at the following address: Chief Counsel, NASA Goddard, Goddard Space Flight Center, Code 140, Greenbelt, MD 20771, unless and until NASA Goddard notifies the Administrators of a different address.

B. Replacement of Trustees and Administrators.

An Administrator may resign by sixty (60) days written notice to the presiding Administrative Judge, subject to approval. In the event of resignation of an Administrator, the Judge may by order appoint a successor Administrator. Upon executing a written acceptance of an executed copy of this Order, and on the settlement of the accounts and discharge of the prior Administrator, the successor Administrator shall have, without further act on the part of anyone, all the duties, powers, functions, immunities, and discretion granted to the original Administrators. Any Administrator who is replaced (by reason other than death) shall execute all instruments, and do all acts, that may be necessary or that may be ordered or requested in writing by the presiding Administrative Judge or by any successor Administrator, to transfer administrative powers over the Fund to the successor Administrator. The appointment of a successor Administrator, if any, shall not under any

circumstances require NASA Goddard to make any further payment of any nature into the Fund or otherwise. All notices hereunder, including notices of resignation or removal of any Administrator, must be in writing and directed to the presiding Administrative Judge, the Administrators and, where relevant, NASA Goddard.

C. Liability and Indemnification of Administrators.

Subject to compliance with the Agreement terms and this Order, the Administrators shall be free from any and all liability to the Fund in connection with the administration of the Fund and the settlement of Class Members' claims from the Fund, except for any loss arising out of their gross negligence and/or willful misconduct.

1. The Fund shall indemnify and hold harmless the Administrators as to any third-party claims against them arising from their status as Administrators for all expenses, including, attorneys' fees, judgments, fines, and amounts paid in settlement of any action, which amounts are ordinarily and reasonably paid by them in connection with such action, suit, or proceeding, but only if the Administrators acted in good faith and in a manner they reasonably believed to be in the best interest of the Fund and the Class Members.

IV. SEVERABILITY

If any term or provision of this Order, or the application thereof to any person or circumstances, is held to any extent to be invalid or unenforceable, the remainder of this Order, or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Order shall be valid and enforceable to the fullest extent permitted by law. If there is any conflict between the terms of this Order and the

Agreement, the Agreement shall take precedence. However, in the event any of the settlement terms incorporated in this Order is held invalid, the effect shall be to invalidate the whole Order. Any capitalized terms not defined herein have the meaning ascribed to them in the Agreement.

IT IS SO ORDERED.

Dated: July __, 2002

Linda A. Kincaid
EEOC Administrative Judge

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE
CITY CRESCENT BUILDING
10 South Howard Street
Baltimore, Maryland 21201**

WALTER FLOURNOY, ET AL

Class Agent

v.

**SEAN O'KEEFE, ADMINISTRATOR
NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

Agency

EEOC NO. 120-A2-1267X

AGENCY NO. NCN-92-GSFC-F064

NOTICE OF SETTLEMENT

**FROM: THE HONORABLE LINDA A. KINCAID
ADMINISTRATIVE JUDGE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE**

**TO: ALL AFRICAN AMERICAN PERSONS EMPLOYED BY NASA
GODDARD AS GS-13 OR GS-14 NON-MANAGERIAL, NON-
SUPERVISORY SCIENTISTS OR ENGINEERS AT ANY TIME
FROM APRIL 19, 1991 TO FEBRUARY 25, 2002, WHO WERE
ELIGIBLE FOR AND DID NOT RECEIVE PROMOTIONS TO
THE GS-14 OR GS-15 GRADES**

Pursuant to 29 C.F.R. §1614.204(g)(4), this is to inform you that a resolution, in the form of a Settlement Agreement (the "Agreement" or "Settlement"), has been reached by the Class and NASA Goddard Space Flight Center, in an administrative class action alleging race discrimination in promotions. If finally approved by the U.S. Equal Employment Opportunity Commission (EEOC or Commission), this will be a complete Settlement of the class claim and will provide various kinds of relief, including monetary relief, for those eligible members of the Class.

Before a decision is reached on whether to finally approve the Settlement, you must be informed of the general terms of the proposed Agreement and of your right to comment on the Settlement, if you so desire. If the Settlement is finally approved and becomes effective after a hearing (the Fairness Hearing or Hearing) regarding the fairness of the Settlement, this judgment will be final and binding on all members of the Class.

This Notice is only a summary of the relief being given under the terms of the Settlement. The entire Settlement Agreement is provided to you as an enclosure or attachment, and may further be downloaded from Class Counsel's website, www.katorparks.com.

A decision as to whether to give Final Approval to this Settlement Agreement will be reached after the Fairness Hearing. **The Fairness Hearing will be held at 2:00 p.m. on July 8, 2002, in the fourth floor conference room at the U.S. Equal Employment Opportunity Commission, 10 South Howard Street, Baltimore, MD.**

You are not required to appear at the Hearing. If you are a Class Member and do not appear, you will be represented by attorneys for the Class at no cost to you. If you wish, you may appear and comment favorably or otherwise on, or file a petition to vacate, the Settlement. You may also hire an attorney of your own choice, if you wish, at your own expense. If you plan to comment on or want to file a petition to vacate the Settlement Agreement, you must file a written notice of appearance identifying yourself and any attorney you may retain and state specifically your comment, or in the event that you wish to file a petition to vacate, file the petition, by June 7th, 2002. This statement and/or petition must be mailed to the EEOC and Class Counsel at both of the following addresses: Linda A. Kincaid, EEOC Administrative Judge, 10 South Howard Street, Suite 3000, Baltimore, MD 21201; and Maia Caplan, Esq., Kator Parks & Weiser, PLLC, 1020 19th Street, NW, Suite 350, Washington, DC 20036. It must be postmarked on or before June 7th, 2002 to be considered. You need not appear at the Hearing for your comments or petition to be considered by the presiding Administrative Judge. However, you may appear **only** if you first file the notice and statement described above to advise the presiding Administrative Judge of your intention to appear. In other words, if you do not file your petition to vacate or a statement of your comments and the identity of any attorney that you wish to represent you by June 7th, 2002, your petition or comments will not be considered and you will not be given the opportunity to offer your petition or comments during the Hearing. Additionally, only those who timely file a petition to vacate the Settlement will be permitted to file an appeal in the event that the Settlement is approved by the presiding Administrative Judge notwithstanding their objection.

SUMMARY OF AGREEMENT

1. In April, 1993, Class Agent Walter Flournoy filed an administrative class action complaint against NASA Goddard alleging that it discriminated against African American non-managerial scientists and engineers at the GS-13 and GS-14 levels by failing to award them promotions to the GS-14 and GS-15 levels under the Manpower Utilization Review Council (MURC). NASA Goddard has denied all allegations and does not admit to any wrongdoing.

Following seven years of litigation, and over a year of intensive mediation, counsel for NASA Goddard and Class Counsel advised the presiding Administrative Judge that they had agreed in principle that the case should be settled without uncertainty, delay, and expense of continued litigation.

2. You are a member of the Class affected by the Settlement Agreement (the "Class") if you are an African American who, at any time between April 19, 1991 and February 25, 2002, was employed by NASA Goddard as a non-managerial, non-supervisory scientist or engineer in the GS-13 or GS-14 level, and was eligible for and did not receive a promotion to the GS-14 or GS-15 level, respectively.

Even if you come within these definitions, however, you will not be able to recover any money under the Agreement for any claim(s) as to which you knowingly executed a valid release or as to which there has previously been a

final judicial or administrative determination in a separate proceeding against NASA Goddard.

3. The Agreement settles claims of race discrimination against NASA Goddard, which were made or could have been made, by members of the Class based on their employment with NASA Goddard during the relevant time period. If you have such a claim, the Settlement Agreement provides your only means of redressing it. Otherwise, such claims are barred. Moreover, the Class Agent and all Class Members who accept a monetary award under the Agreement will be barred from asserting any race discrimination in employment claim against NASA Goddard for actions or omissions relating to their employment as scientists or engineers at the GS-13 and GS-14 levels through February 25, 2002.
4. Under the Settlement, NASA Goddard will pay Three Million Seven Hundred Fifteen Thousand Two hundred and seventy-eight dollars (\$3,715,278.00) into the Settlement Fund (Fund). The Settlement Fund shall be administered by Class Counsel under the presiding Administrative Judge's supervision. The Fund will be divided into three portions. The first portion or Claims Fund shall consist of \$2,286,459.00 in the aggregate, together with interest and income earned on this amount. The Claims Fund shall be used to pay the Class Agent and Class Members to resolve their Class Claims and to maintain reserves for taxes. The second portion, or Contribution Fund, consists of \$500,000 and shall be used to compensate the Class Agent and other Mediation Representatives for their special

contributions in prosecuting this action and negotiating the Settlement. The third portion will be used to pay counsel for the Class Agent and the Class for their attorneys' fees, experts' fees and other expenses, through the Fairness Hearing.

5. If you are a Class Member and wish to partake in the monetary Settlement, you do not have to file a claim or contact Class Counsel, the presiding Administrative Judge or NASA Goddard. The Claims Fund will be distributed to all Class Members according to a formula devised by Class Counsel and approved by the presiding Administrative Judge. The formula (Exhibit 5 to the Settlement Agreement) includes points for factors including time-in-grade, length of time at NASA Goddard, and level of performance evaluations during the pertinent liability period.

The final proposed awards will be submitted under seal to the presiding Administrative Judge for approval. The awards will then be made based on analyses made by Class Counsel after reviewing NASA Goddard's personnel data and applying the formula. All personnel data will be protected as confidential information. Class Member awards will reflect their total assigned points in proportion to total points of all Class Members combined. At this time, it is not possible to predict how much money a particular claimant will receive, if any.

All Class Members receiving monetary awards will be required to sign releases, in language agreed to by Class Counsel and NASA Goddard, of all race discrimination in employment-related claims concerning their employment as scientists or engineers at the GS-13 and GS-14 levels through February 25, 2002,

and of claims against the Settlement Fund. Class Counsel and/or the Claims Administrator will be required to withhold from each award and deposit with the government all employment and income taxes.

6. Under the Settlement, NASA Goddard will also award a minimum of 22 promotion awards to Class Members. The awards will be of three types. None of the provisions provide for displacing any employee from a job or changing promotional opportunities for non-Class Members.

First, NASA will award 12 promotion awards to retired and retirement eligible Class Members who elect to retire pursuant to a formula devised by Class Counsel and approved by the presiding Administrative Judge. It is anticipated that the formula will be based on factors such as time at NASA Goddard, time-in-grade, and contribution to prosecution and/or mediation of the case. If you are a retired or retirement eligible Class Member, you do not have to file a claim to participate; you will automatically be evaluated under the formula and receive notification if you are qualified to receive an award or awards. You will be provided with an opportunity to verify the accuracy of the data used by Class Counsel to determine your qualification. If you qualify for an award(s) and are retirement eligible (not retired), you will then be provided an opportunity to determine if you wish to retire and accept the promotion, or whether you wish to remain as a current employee and forego the promotion award. Promotions received under this process are retroactive to five years. Award recipients will be entitled to retroactive annuity payments, less their employee share, and enhanced

prospective annuity payments. Any back pay associated with such promotion will be allocated to the Class Claims Fund, and distributed to the entirety of the Class pursuant to the monetary distribution formula referenced in paragraph 5. As with monetary awards, the final proposed promotion awards will be submitted under seal to the presiding Administrative Judge for approval. At this time, it is not possible to predict which retired or retirement eligible Class Members will receive a promotion award(s) of this type.

Second, NASA Goddard will allocate at least ten promotions to Class Members who are current employees. Those current employees who are immediately ready for promotion will receive their promotions within five months of final approval by the presiding Administrative Judge and implementation of this Agreement. Those current employees who, with additional training or assignments would be ready for promotion within one year, will receive said promotion(s) within one year of final approval. NASA Goddard will determine who is to receive such awards pursuant to a merit-review process of all Class Members in grade for greater than one year, which review shall be headed by the Director of Applied Engineering and Technology (AETD). In recognition of his special contribution to the case, however, the Class Agent may elect to receive a promotion under this provision without being reviewed provided he does not elect to retire and avail himself of the promotion awards process for retired and retirement eligible Class Members. Following completion of the Class Member review, NASA Goddard will proceed with a promotion review encompassing non-Class Member non-managerial, non-supervisory scientists and engineers with eight or more years in

grade and promote those deemed eligible. Both Class Member and non-Class Member promotional data will be provided to Class Counsel for statistical review and analysis. Promotions accorded under this process will be prospective.

Third, a minimum of 10 Class Members will be identified for guaranteed participation in NASA Goddard's two-year Accelerated Leadership Program. If the program is successfully completed, such Class Members will receive a FPL of GS-14.

7. Class Members wishing to verify their own personnel data supplied by NASA Goddard and relied on by Class Counsel to calculate eligibility for monetary and promotions awards may write to "Administrator for the NASA Goddard Class" at P.O. Box No. 10888, Tallahassee, Florida 32302-2888 and request their individual data upon Final Approval of the Settlement. Class Members shall have sixty (60) days from Final Approval of the Settlement to challenge the accuracy of the data. Class Members wishing to challenge the accuracy of the data used to calculate awards must do so in writing to the above address within sixty (60) days of Final Approval of the Settlement, or their objection to the data will not be considered. In addition, on or about the thirty-fifth (35th) day following Final Approval of the Settlement, Class Counsel will announce and post a representative at NASA Goddard so that Class Members may verify their information in person if they so choose.

8. At its own expense, and apart from the Settlement Fund and promotions awards, NASA Goddard has agreed that during the twelve months following implementation of the Agreement it will work with an independent expert (subject also to Class Counsel's review) to analyze and make revisions to its performance management system including its processes for granting or effectuating: (1) accretion and career ladder promotions; (2) performance appraisals; (3) training; and (4) performance awards. Additionally, NASA Goddard will (5) work with an Independent Mediation Expert to evaluate and redesign its alternative dispute resolution process for handling informal equal employment opportunity complaints; (6) provide additional diversity training to its management and supervisory staff; and (7) clarify that managers who receive an unsatisfactory score on the equal employment opportunity component of their performance evaluation may not be promoted for the following twelve months. These various prospective internal revisions in employment practices that NASA Goddard has agreed to implement are intended to enhance opportunities for employment and advancement of all NASA Goddard scientists and engineers, without regard to race, and to provide a workplace that promotes fairness for all employees. NASA Goddard's compliance with its commitments will be monitored by the presiding Administrative Judge through reports to be supplied to Class Counsel by NASA Goddard, and periodic meetings held between Goddard and Class Counsel. Class Counsel thereafter will file periodic summaries of such reports with the presiding Administrative Judge.

9. NASA Goddard's payment into the Settlement Fund will also cover costs, fees and expenses incurred by the Class in the litigation from its inception through Final Approval of the Agreement by the presiding Administrative Judge. NASA Goddard will also cover the administration and distribution of the Settlement Fund, the costs of the Independent Experts, and the monitoring of its compliance with the Settlement Agreement over its three-year term. Thus, if you are a Class Member and receive an award from the Fund, you will not owe individually any fees or expenses to the lawyers who have represented you as part of the Class.

HEARING

If you wish to comment on the Settlement, or submit a petition to vacate, and do not file it with the presiding Administrative Judge by June 7th, 2002, the Administrative Judge will not consider it in determining the fairness of the Settlement. Any person or representative who will appear at the Hearing on July 8th, 2002, must identify him/herself in writing, along with a statement of the comment or the petition to vacate, to the presiding Administrative Judge and to Class Counsel no later than the last day for filing written objections, June 7th, 2002, at the following addresses: Linda A. Kincaid, EEOC Administrative Judge, 10 South Howard Street, Suite 3000, Baltimore, MD 21201; and Maia Caplan, Esq., Kator Parks & Weiser, PLLC, 1020 19th Street, NW, Suite 350, Washington, DC 20036.

If the presiding Administrative Judge grants final approval to the Settlement notwithstanding objections or a petition to vacate, you will not be permitted to appeal the final approval determination unless you have filed an objection or petition to vacate. If

you do not wish to object to or comment on the terms of the Settlement, it is not necessary to attend the Fairness Hearing or do anything else.

Class Members may obtain a written response to their written questions about the Settlement from Class Counsel by addressing your inquiries to Maia Caplan, Kator Parks & Weiser, PLLC, 1020 19th Street, NW, Suite 350, Washington, DC 200036. Additionally, Class Members with procedural questions about the Settlement may phone the Claims Administrator at (866) 385-5767.

The judgment of the Administrative Judge will be final as to the fairness and adequacy of this Settlement. The judgment will determine the rights of Class Members and any other affected persons or entities with respect to the matters covered by the Agreement, and you will be bound by the judgment whether favorable or not.

May 2, 2002
Date

Linda A. Kincaid
Linda A. Kincaid
EEOC Administrative Judge